121-552

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1883.

No. 235.

GEORGE W. FROST AND ABBY B. FROST, APPELLANTS.

vs.

MARTIN SPITLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED MARCH 4, 1884.

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1 Pleas before the Honorable George W. McCrary, judge of the circuit court of the United States for the district of Nebraska, within the eighth judicial circuit, at the term of January, A. D. 1883.

Be it remembered that on the 30th day of September, 1880, a bill was filed in the office of the clerk of said circuit court, which said bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

To the honorable George W. McCrary, and Elmer S. Dundy, judges of said court:

Humbly complaining, showeth unto your honors your orator, Martin Spitly, that he is a resident and citizen of the State of Illinois, and has been for the past five years or more.

That he is the owner in fee-simple of lots three and four, in block number fifty-two, in the city of Omaha, and in said district aforesaid, together with the improvements thereon.

Your orator further represents unto your honors that about the year 1866 one George W. Frost, who is a resident and citizen of the State of Nebraska (whom your orator prays may be taken as a party respondent to this your orator's bill of complaint), went into the employ of the Union Pacific Railroad Company, a corporation existing under the laws of the United States, and also, about that time, into the employ of the Credit Mobilier of America, so called, a corporation created by and existing under the laws of the State of Pennsylvania, who is now, and has been for many years, a citizen of said State, and whom your orator prays may be taken a party respondent to this your orator's bill of complaint, and both

2 of said corporations were represented by one Thomas C. Durant, who was vice-president of the first and president and trustee of the second, and had full authority to and did employ the said Frost to act as their purchasing agent in the building and construction of the Union Pacific railroad, or a large portion thereof, between the Missouri river, in the State of Nebraska, and the city of Ogden, in the territory of Utah. And your orator further represents that the respondent, The Credit Mobilier of America, agreed to and did purchase said lots and build a home thereon for the respondent Frost, and took the title to said property in the name of the said Durant, who is a resident and citizen of the State of New York (whom your orator prays may be taken a party respondent to your orator's bill of complaint), in trust for said respondent Frost, until the end of his employment, when, upon final settlement between said Frost and the said Credit Mobilier of America, the said respondent Durant should convey the legal title of said property to said Frost or his grantee.

Your orator further represents that the said respondent Frost lived up to and performed all the conditions of his contract with said corporations, and had refunded to said Credit Mobilier of America all the money it had paid for said property, together with interest

amounting to eight or nine thousand dollars, lacking the trifling sum of three or four hundred dollars, but refused to make any adjustment with said Frost, or cause to be conveyed to him the legal title to said lots, which then stood, and still do stand, on the records of the county of Douglas, in said district, in the name of said respondent Durant.

Your orator further represents unto your honors that about the year 1870 the respondent Frost entered into an agreement with your orator's grantee, John I. Redick, who was at that time and still is a practising lawyer in the city of Omaha, that he should commence proceedings in the State court and compel the respondent, the said Credit Mobilier of America, to make an adjustment and convey to him the property aforesaid, and, if successful, the said attorney was to have and receive from said Frost twenty-five hundred dollars, and it was understood and agreed between said Frost and said attorney that he should have and hold an equitable lien upon said property as security for the payment of said sum.

3

Your orator further represents to the court that the said attorney under said agreement commenced proceedings in the State court for the said respondent Frost to that end, and after four or five years of a bitterly contested litigation the State court found with the respondent Frost, made an adjustment between him and said Credit Mobilier and said Thomas C. Durant, and decreed, among other things, that upon condition that the said Frost would deposit with the clerk of that court for the use of said Credit Mobilier, within thirty days from the rising of the court, two hundred and seventy dollars and interest, or thereabouts, that thereupon the said Durant should convey to said Frost the legal title to said premises, and in default thereof a master of the court should convey, etc.; *to* which proceedings and all thereof your orator prays leave to produce and read at the hearing of this cause.

And your orator further represents that at that time, before, and ever since the said Frost has been, was, and still is utterly and totally insolvent.

4

And your orator further represents that the said respondent Frost, for the express purpose of defrauding said Redick out of his lien on said property, refused to comply with the decree of said State court, but immediately entered into some secret and fraudulent arrangement with said respondents, The Credit Mobilier of America and Thomas C. Durant, it and he knowing the fraudulent intention of said Frost, by which he, the said Frost, was to let the State court decree lapse, and a conveyance be made by said Durant of said property to said Frost, or some one of his family for him, which should be kept off the records of said Douglas county and thereby defeat the said attorney from holding thereon his equitable lien, which was done, and which deed was executed by said Durant in pursuance thereof, and is in the hands of some one to your orator unknown, but who, when discovered, your orator prays may be taken a party respondent hereto.

And your orator further represents that for the purpose of more

completely putting into execution and accomplishing the fraud aforesaid, the said Durant, trustee aforesaid, commenced proceedings in the State court against the respondent Frost, and his sub-tenant, George P. Bemis, to oust them from the possession and occupancy of said premises, claiming in said proceedings that said decree had lapsed and that said respondent Frost had lost all interest of every kind and nature in said premises by reason of not having complied with said decree; that said respondent Frost made no defense to said action, but for the fraudulent purpose aforesaid let default go against him, which action is still pending, and to which proceedings and records of the court your orator begs leave to refer and produce and read at the hearing of this cause.

Your orator further represents that before the commencement of the said last-mentioned proceedings against said Frost by said Durant, your orator's grantor, John I. Redick, commenced a suit in attachment on the law side of this honorable court and attached the interest of said Frost in said premises, and such proceedings were had
5 in said action that about the November term, 1878, the said Redick recovered a judgment against said Frost for about twenty-five hundred dollars, the said Frost appearing by counsel and defending said suit and alleging that at that time and the time the suit was commenced said Frost had left the State of Nebraska and had become a resident and citizen of the Territory of Montana; that an order of sale was issued directed to the marshal of the United States commanding him to sell the premises before described according to law, which was done by said marshal, and the said Redick became the purchaser thereof, which sale was afterwards confirmed by this honorable court and the marshal directed to execute a deed to the purchaser, which was accordingly done, and thereupon the said Redick became the owner of the right, title, and interest and all thereof of the said respondent Frost in and to said property.

To all of which proceedings and records of the court your orator begs leave to refer and produce and read at the hearing of this cause.

And your orator further represents that afterwards, to wit, about the —— term of said State court, 18—, he, said Redick, was permitted by said court to be made a party defendant in the case of Durant against Frost aforesaid, therein showing to the court that he had succeeded to [the] rights of said Frost in and to said property; and said Redick thereupon paid to the respondent, The Credit Mobilier of America, the sum of six hundred and eighty-four dollars, the amount due it under the State court decree aforesaid, and which amount the said Credit Mobilier accepted in full compliance with said decree.

Your orator further represents that neither the respondent Frost [nor] the Credit Mobilier of America ever paid any taxes upon said property or any part thereof, but have permitted the same to accumulate from year to year and have permitted the same to
6 become a cloud upon the title of your orator; and between the years 1872 and 1880 one Thomas Bryant, who is a resident and citizen of the State of Wisconsin (and whom your orator prays may be taken a party respondent to this your orator's bill of com-

plaint), purchased the same at tax sale and procured a deed from the treasurer of Douglas county, Nebraska, which deed was recorded in the office of the county clerk of said county, in book —, at page —, and now claims to have a lien or claim against said property amounting to about four thousand dollars, while your orator charges the fact to be that the levy and assessment of all of said taxes against said property were illegal and void, but are clouds upon the title of your orator and prevent him from selling the same at a fair value. And your orator further represents that he stands ready and willing at all times, under the direction of the court, to pay any just or legal tax assessed against said property or any part thereof.

And your orator further charges the fact to be that notwithstanding that the respondent, The Credit Mobilier of America, and its trustee, Thomas C. Durant, have received from said Redick the sum of six hundred and eighty-four dollars, the full amount of its claim against said property, yet they continued the suit in court against said property, which creates a cloud upon and an incumbrance against the same; as well also does the said Durant, for the purpose of harassing and annoying your orator, refuse to withdraw said suit or to convey said property to respondent Frost, said Redick, or complainant, but permits the title to said premises to stand in his name upon the records of Douglas county, while in truth and in fact neither said respondent Durant nor his *cestui que trust.* have any interest in said property or any part thereof.

7 And your orator further represents unto your honors that the respondent Frost at times claims to have a homestead interest in said property, saying he never left the State of Nebraska with the intention of changing his residence, and at other times he claims that he holds a deed to said premises from said Thomas C. Durant, and at other times pretends that he is interested in the tax claim held by respondent Bryant upon said premises, while your orator charges the fact to be that the said Frost, the Credit Mobilier of America, Thomas C. Durant, Thomas Bryant, and divers other persons to your orator unknown (but whom, when discovered, your orator prays may be made parties respondent to this your orator's bill of complaint, with apt words to charge them), are combining and confederating to injure, wrong, and oppress your orator, to cloud up the title to said premises, and to prevent your orator from selling the same at a fair value, to the irreparable damage and injury of your orator.

And your orator further represents that the respondent Frost is in possession of said premises and has been for some months past, and that he is utterly and totally insolvent at this time, and the use of said premises is worth fifty dollars per month, and prays your honors to direct the marshal of the United States to act as receiver in this case, pending the litigation, and collect the rents and profits of said premises, and to hold the same subject to the order of this court.

And your orator had well hoped that the respondents would have released and given up all title and claims of title to said premises, and the respondent, Thomas C. Durant, would have conveyed the

legal title of said premises to your orator, or his grantor, as in equity and good conscience they ought to have done.

But now so it is, may it please your honors, that the said George W. Frost, Credit Mobilier of America, Thomas C. Durant, and
8 Thomas Bryant, combining and confederating together with divers persons whose names at present are to your orator unknown, but who, when discovered, your orator prays may be taken parties to this his bill of complaint, with appropriate words to charge them in the premises, contriving how to wrong, injure, and defraud your orator in this behalf, utterly refuse to convey the legal title to said premises to him, or his grantor, and refuse to desist from their claims of title of various kinds thereto; all of which actings and doings of said respondents and their confederates is contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

In tender consideration whereof, and inasmuch as your orator is remediless by the strict rules of the common law and cannot have adequate relief except by the aid and interference of this honorable court, where matters of this kind are properly cognizable and relievable, to the end, therefore, that the said George W. Frost, Thomas C. Durant, Credit Mobilier of America, Thomas Bryant, and their confederates, when discovered, may full, true, direct, and perfect answers make, but not under oath, their answers under oath being hereby expressly waived, according to the best of their knowledge, information, recollection, and belief, to all and singular the matters and things in this your orator's bill of complaint contained, and that as fully and at large, paragraph by paragraph, as if the same were here again repeated and you and each of you thereunto separately interrogated, and especially that the said Thomas C. Durant and the Credit Mobilier respondents may discover, under their respective corporal oaths, and set forth—

1. Whether it and he, at the instance of said Frost, did not execute a deed of said premises in due form and send the same to Andrew J. Poppleton, its attorney, at Omaha; and, if so, what was the date of said deed and who was the grantee therein?

9 2. Is it not a fact that the said John I. Redick, complainant, grantor, paid to the Credit Mobilier the amount due it under the decree rendered by the State court referred to in the bill, and did it not accept it in full compliance with said decree?

And that it may be decreed by this court that the said respondent, Thomas C. Durant, [and] Credit Mobilier of America, may convey to your orator the legal title to said premises in due form so as to entitle it to record; that the said Frost has no interest, claim, or demand on said property or any part thereof, and that the said claim of the said Thomas Bryant is a cloud upon the title of your orator as well also as the record title of said Durant; and that all of said respondents have combined and confederated together to cloud up, injure, and depreciate the value of said property, and that your orator is the owner in fee-simple of said property and entitled to the possession and enjoyment thereof, and for such other and further relief as to the court shall seem right and proper.

And may it please your honors to grant unto your orator the writ of subpœna, to be issued out of and under the seal of this honorable court, to be directed to Thomas C. Durant, Credit Mobilier of America, George W. Frost, and Thomas Bryant, and their confederates, when discovered, commanding them on a certain day therein to be inserted, to be and appear before this honorable court and answer all and singular the premises in this behalf, and to stand to and abide by such orders, directions, or decrees in the premises as shall be made therein.

And your orator as in duty bound will ever pray.

REDICK AND REDICK,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
District of Nebraska, } ss:

On this 30th of September, A. D. 1880, personally appeared
10 *one*, James F. Morton, a notary public in and for Douglas county in said district, John I. Redick, who being first duly sworn, says he is one of the solicitors for complainant, who is a non-resident of said district and absent therefrom at this time; that he has heard read the foregoing bill of complaint and knows the contents thereof, and that the statements therein are true of his own knowledge, except those founded on information and belief, and as to those he believes them to be true.

JOHN I. REDICK.

Subscribed in my presence and sworn to before me this 30th day of September, 1880.

[SEAL.] JAMES F. MORTON,
Notary Public.

Upon the back of said bill appear endorsements in words and figures following, to wit: Omaha, Sept. 30, 1880. I hereby agree to become security for cost in the within-entitled case. Dennis Cunningham. Above security for costs approved by me this 30th day of Sept., 1880. Watson B. Smith, clerk. No. 8, G. Circuit court of United States, district of Neb. In equity. Martin Spitley, comp't, *vs.* George W. Frost *et al.*, respond't. Bill. Filed Sept. 30, 1880. Watson B. Smith, clerk. Redick & Redick, solicitors for complainant.

Thereupon, afterwards, to wit, on the 30th day of September, A. D. 1880, a subpœna in chancery was duly issued in said case, and returned and filed October 8th, 1880, which said subpœna in chancery is in words and figures following, to wit:

UNITED STATES OF AMERICA, }
District of Nebraska. } ss:

11 The President of the United States of America to Thomas C. Durant, Credit Mobilier of America, George W. Frost, and Thomas Bryant, Greeting:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of

Nebraska, at Omaha, on the first Monday in November next, it being the first day of November, A. D. 1880, to answer to the bill of complaint of Martin Spitly this day filed in the office of the clerk of said court, and then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of the said bill being taken as confessed against you and decree pronounced accordingly.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 30th day of September, A. D. 1880, and of the Independence — the 105th year.

[SEAL.] WATSON B. SMITH, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Omaha aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

WATSON B. SMITH, *Clerk.*

Attached to said subpœna in chancery are the returns of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 30th day of September, 1880, I received this subpœna in chancery, and on the 8th day of October, 1880, I served the same upon the within-named defendant, George W. Frost, in Douglas county, State and district of Nebraska, by leaving a certified copy thereof, with all the endorse-
12 ments thereon, at the usual place of abode of the said defendant, with an adult person and resident in the family of said defendant.

WILLIAM DAILY,
United States Marshal for the District of Nebraska,
By E. L. BIERBOWER,
Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 30th day of September, 1880, I received the within subpœna, and that after diligent search I am unable to find the within-named defendants, Thomas C. Durant, Credit Mobilier of America, and Thomas Bryant, within my district.

WILLIAM DAILY,
United States Marshal for the District of Nebraska,
By E. L. BIERBOWER,
Deputy United States Marshal.

Upon the back of said subpœna in chancery appear endorsements in words and figures following, to wit: No. 8, doc. G. Circuit court of the United States for the district of Nebraska. In chancery. Martin Spitly *vs.* George W. Frost *et al.* Subpœna in chancery.

Returnable to rule day first Monday in November, 1880. Watson B. Smith, clerk. Returned and filed Oct 8, 1880. Watson B. Smith, clerk. Redick and Redick, comp't's sol.

Thereupon, afterwards, to wit, on the 6th day of December, 1880, a demurrer of George W. Frost was filed in said case, which said demurrer is in words and figures following, to wit:

Demurrer of Geo. W. Frost.

In the Circuit Court of the United States, District of Nebraska. In Equity.

MARTIN SPITLY, Complainant,
vs.
GEORGE W. FROST *et al.*, Respondents.

13 This defendant, George W. Frost, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill and to all the matters and things therein contained, and humbly prays this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that, in our opinion, the foregoing demurrer of George W. Frost, defendant, to the bill of complaint of Martin Spitly, complainant, is well founded in law and proper to be filed in the above cause.

WEBSTER & GAYLORD,
Solicitors and of Counsel for
George W. Frost, One of Defendants.

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

George W. Frost, being first duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

GEO. W. FROST.

Subscribed in my presence and sworn to before me this 6th day of December, 1880.

WATSON B. SMITH, *Clerk.*

14 Upon the back of said demurrer appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitly, complainant, *vs.* George W. Frost *et al.*, defendants. Demurrer of George W. Frost, Filed Dec. 6, 1880. Watson B. Smith, clerk. Webster and Gaylord.

Thereupon, afterwards, at the November term of said court, on the 13th day of December, 1880, the following proceedings were had, as appears of record on folio 609, Journal F, of said court, to wit:

MARTIN SPITLY
vs.
THOMAS C. DURANT *et al.* } No. 8, G.

This cause being heard on demurrer to the bill, the court does, on consideration thereof, overrule said demurrer; to which ruling of the court said defendants, by their solicitors, except.

Said defendants are ruled to answer herein in 30 days, plaintiff to reply in 50 days from this day, and cause continued.

Thereupon, afterwards, to wit, on the 11th day of January, 1881, answer of Thomas Bryant was filed in said case, which said answer is in word and figures following, to wit:

Answer of Thomas Bryant.

In the Circuit Court of the United States within and for the District of Nebraska. In Equity.

MARTIN SPITLY, Complainant,
vs.
THOMAS C. DURANT, CREDIT MOBILIER OF AMERICA, GEORGE W. FROST, and THOMAS BRYANT, Defendants. } No. 8, G.

The answer of Thomas Bryant, one of the above-named defendants, to the bill of complaint of Martin Spitly, complainant.

15 The defendant, reserving to himself all right of exception to said bill of complaint, for answer thereto saith—

That he has no knowledge, information, recollection, or belief as to the matters and things set forth and alleged in said bill of complaint, save by said complainant's bill itself, except as hereinafter set forth and alleged.

The defendant admits that said Durant commenced proceedings in the State court against said Frost and his sub-tenant, George P. Bemis, to oust them from the possession and occupancy of said premises described in said bill of complaint, and that said Frost made no defense to said action, and that said action is still pending; admits that said John I. Redick was permitted to be made a party defendant in said action; admits that said Frost and said Credit Mobilier of America never paid any taxes upon said property or any part thereof; and that the defendant Bryant purchased said property at tax sales; and that he has paid all taxes thereon since 1867, inclusive; and that tax deeds of said real estate from the treas-

urer of Douglas county, Nebraska, have been issued to him, and that said deeds have been recorded: that, if said Bryant's tax claims and liens had not merged into a title to said real estate, his claim would now amount to more than five thousand dollars ($5,000.00), or about the full value of said real estate; that said defendant Bryant only claims a lien for said taxes and interest thereon in the event of his claim of title being found to be invalid.

Said defendant denies that the assessment and levy of any of said taxes were illegal or void, but, on the contrary, alleges that all of said taxes were legally levied pursuant to regular, legal, and valid assessments of said real estate, and that all proceedings prior to the sale of said property to this defendant were legal and valid,
16 and that this defendant, by reason of the deeds issued pursuant to said sales and the facts and circumstances surrounding, including the fact that some of said deeds were record*ing* more than three years prior to the commencement of this suit, during all of which time said real estate has been occupied adversely to said complainant, claims to be and is the owner in fee-simple and entitled to the possession of said real estate.

Said defendant admits that said Frost is, and for some months prior to the filling of said bill of complaint has been, in possession of said premises.

Said defendant, further answering, saith that other facts alleged in said bill of complaint not herein answered may be true for anything this defendant knows to the contrary, but this defendant is an utter stranger to all and every such matters, and cannot, so far as he has knowledge, information, or recollection, form any belief concerning the same.

Said defendant, further answering, denies that said complainant or any other person, save this defendant, has any right, title, interest, claim, or estate in or to said real estate whatever, or any part thereof, or any right of possession thereof.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS BRYANT, *Defendant*,
17 By GROFF & MONTGOMERY AND BARTLETT,
His Solicitors.

GROFF AND MONTGOMERY,
Of Counsel.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 8, Doc. G. United States circuit

court, district of Nebraska. In chancery. Martin Spitly, complainant, *versus* Thomas C. Durant *et al.*, defendants. Answer of Thomas Bryant. Filed Jan'y 11, 1881. Watson B. Smith, clerk. Groff and Montgomery & Bartlett, solicitors for plaintiff; residence, Omaha, Neb.

Thereupon, afterwards, at the January term of said court, on the 25th day of January, 1881, the following proceedings were had, as appears of record on folio 714, Journal F, of said court, to wit:

MARTIN SPITLY.
vs.
THOMAS C. DURANT *et al.* } No. 8, G.

On motion of said defendant, George W. Frost, by his solicitor, Mr. Webster, leave is hereby granted him to file his answer herein instanter.

Thereupon, afterwards, to wit, on the 25th day of January, 1881, an answer was filed in said case, which said answer is in the words and figures following, to wit:

18 *Answer of Geo. W. Frost.*

In the Circuit Court of the United States, District of Nebraska.

MARTIN SPITLY, Complainant,
vs.
THOMAS C. DURANT, CREDIT MOBILIER OF AMERICA, GEORGE W. FROST, and THOMAS BRYANT, Defendants. } No. 8, G.

The answer of George W. Frost, one of the above-named defendants, to the bill of complaint of Martin Spitly, complainant.

The defendant, reserving to himself all right of exception to said bill of complaint, for answer thereunto saith—

That he has no knowledge or information that said complainant is the owner in fee-simple of lots three and four, in block number fifty-two, in the city of Omaha, in said district, with the improvements thereon; that one John I. Redick, who is the attorney for the complainant in this cause and who is represented to be the grantor to the lands in controversy to the complainant, has, for a long time past, claimed to be the owner in fee-simple of said lands, and to have acquired his title to said lands at a sale made under the order of this court in a cause wherein said John I. Redick was plaintiff and said George W. Frost was defendant, and at which sale said John I. Redick was the purchaser, and which is more fully set out hereinafter; and that on or about the — day of ——, 1880, said John I. Redick commenced an action of forcible entry and detainer against said George W. Frost and before one Gus. Anderson, a justice of the peace in and for Douglas county, in the State of Nebraska, for said lands in complainant's bill of complaint described; and that said Redick in said cause, at the trial thereof, claimed title to and the right to the possession thereof of said lands, under the

title acquired by him, said Redick, at said sale aforesaid, and the deed to him made by the marshal of this district as such
19 purchaser; and this defendant avers that said cause of forcible entry and detainer is still pending in the district court in and for Douglas county, State of Nebraska, by petition in error, and that in said cause said John I. Redick still claims to own said lands and to be therefore entitled to the possession by reason of said title in him.

This defendant, upon information and belief, avers that the complainant is not the owner of said lands, and that there is a pretended ownership in complainant for the purpose of giving jurisdiction to this court and that not otherwise, and that said complainant is not and does not claim to be an owner in good faith of said lands.

The defendant admits the employment by him of said John I. Redick as his attorney to procure for this defendant a title to said lots, but denies that it was understood or agreed between him, said defendant, and said Redick that he, said Redick, should have and hold an equitable lien upon said property as security for the payment of his attorney's fee. Said defendant avers the fact to be that the agreement between this defendant and said Redick was reduced to writing and was as follows:

"In consideration of twenty-five hundred dollars as attorney's fee I agree with Hon. G. W. Frost that I will bring suit and procure, through the courts or otherwise, to him a good title to the premises he, said Frost, now occupies as his residence in the city of Omaha, and in case any settlement or arrangement of the suit then said Frost is to pay in proportion only, and in case said Frost fails to procure said title at all then the said attorney is to have a mere nominal fee for his services, to wit, $100.

"Nov. 11, 1870. "JOHN I. REDICK.
"GEO. W. FROST."

And defendant avers that no other nor different contract as
20 to said attorney's fee was made or existed between said Redick and this defendant.

That afterwards said Redick did commence an action in the district court in and for Douglas county, Nebraska, to acquire a title to said lots in this defendant, and prosecuted said action to the obtaining of a decree which is as follows, in substance: That the plaintiff deposit with the clerk within thirty days from the rising of court the sum of $302.11, with interest from May 31st, 1869, and upon his doing so said Thomas C. Durant was to convey the said property to said George W. Frost.

This defendant denies that at the time of the rendering of said decree and before and ever since he was and is insolvent.

This defendant denies that he refused to comply with said decree of said State court for the purpose of defrauding said Redick, and he denies that he entered into any arrangement, secret, fraudulent, or otherwise, with said Thomas C. Durant and The Credit Mobilier of America or any other parties by which he, said Frost, was to let said decree lapse, and that he, said Frost, was to acquire a convey-

ance of said lots in his name or in the name of any one else for the purpose of defrauding said Redick of his attorney's fee or for any other purpose.

This defendant avers that he had no arrangement in any manner or for any purpose with any party or parties to obtain a conveyance to said lots aside from that provided for in said decree.

This defendant further avers that under said contract before set out between him and said Redick it was the duty of said Redick to pay said money as provided to be paid by this defendant in said decree, in that it was the duty of said Redick to obtain a title to and in this defendant of said lots by legal proceedings or otherwise, and that said Redick claimed and insisted on having said $2,500
21 of this defendant, but neglected and refused to pay the sum provided for in said decree, and by reason of said neglect of said Redick to pay said money and his continued claim of said $2,500 of this defendant, he, this defendant, never received a deed for said lots as provided for in said decree.

This defendant admits that said Thomas C. Durant, trustee, commenced a suit in ejectment against this defendant and said Bemis to obtain the possession of said lots, but this defendant avers that there was no arrangement or understanding or scheme between him and said Durant or any other party or parties that such suit should be brought, and further avers that he did not allow a default to be entered against him in said suit for the purpose of defrauding said Redick.

This defendant further avers that said Redick was then claiming title to said lots under his purchase at the marshal's sale hereinbefore set out, and on his own motion was allowed to be made a party in said suit on the claim that he had become the owner of the interest of said Frost in said lots, and as such defendant filed an answer in said cause.

That afterwards one Bryant also obtained leave to answer in said cause, setting up a tax deed to said lots.

That afterwards said Durant, by his attorney, A. J. Poppleton, in open court dismissed said action of ejectment as to the plaintiff herein, and if said cause is still pending in said court it is only pending as between the defendants and at the instance of said Redick.

This defendant further avers that on or about the 14th day of February, A. D. 1877, said Redick commenced an action on the equity side of this court and against this defendant, claiming an equitable lien on said lots for his professional services, and that after a full hearing of the same before Mr. Justice Miller, it was by him adjudged and determined that said Redick had no lien on said premises, and said action was ordered dismissed.

22 This defendant denies that said Redick paid to the credit Mobilier of America the sum of $684.00, the amount due on said decree, but avers the fact to be that said Redick deposited said sum of money in the hands of the clerk of the court to satisfy said decree, as said Redick was obligated to do by his contract with

said Frost, before set out, in order to procure a title to said lots in said Frost.

That A. J. Poppleton, as the attorney of the Credit Mobilier of America, and Thomas C. Durant accepted said money and receipted to the clerk therefor, not as coming from said John I. Redick, but simply as so much money paid in on said decree, and thereupon said ejectment suit was dismissed as to the plaintiff therein, and thereby said Frost became entitled to have a deed for said lots and acquired a good title thereto, and said title remains in said Frost unaffected by the prior sale of his pretended interest to said Redick, the grantor of the complainant herein.

Defendant further avers that said Redick acquired no title to said lots by virtue of said sale by the marshal and the purchase thereof by said Redick, for the following reasons:

First. Because, as appears by the appraisement made under the order of sale and hereto attached, marked "Exhibit A," and made a part hereof, that said appraisers found that said Frost had no title, legal or equitable, in said lands, but that "the said defendants' only interest in said property, as appears by the records of Douglas county, Nebraska, being that of occupancy and possession, we appraise the said interest as above," to wit, at the sum of $500.

This defendant avers that such an interest, to wit, possession and occupancy, without any interest in the land, is not the subject of sale under an order of sale in such case, and that all proceedings based on such appraisement, to wit, the sale and deed to said Redick, are null and void.

23 Second. Because, as appears by said appraisement, a copy of which is hereto attached, marked "Exhibit A," the marshal obtained from the officers of said Douglas county the certificates by law required, one of which certificates, to wit, that of the clerk of the district court of said county, a copy of which is hereto attached, marked "Exhibit B," and made a part hereof, shows that the said sum of $302.11, with interest thereon, as provided by said decree to be paid by said Frost, had not at the date of said certificate been deposited with said clerk, as more fully appears from said "Exhibit B," and the other of said certificates, to wit, that of the treasurer of said county, a copy of which is hereto attached, marked "Exhibit C," and made a part hereof, shows that said lots had before the date of said certificate been sold for delinquent and unpaid taxes thereon, and that tax deeds thereto had been executed to the purchasers of said lots at such tax sales, and also shows the different amounts for which said lots had been so sold and other delinquent taxes paid thereon by such purchasers, as more fully appears by said "Exhibit C," and that said appraisers in making said appraisement did not estimate said lands at their real value in money and then deduct from such real value any and all liens thereon in order to ascertain the interest of defendant in said lands, as required by law. And defendant avers that said appraisers did not estimate the real value in money of said lands and then find and estimate the amount of liens existing thereon, and then deduct from the real money value of said lands the amount of such liens, as by law required, to ascer-

tain the interest of defendant in said lands, but that said appraisers found the interest of defendant in said lands to be "that of occupancy and possession" only, and appraised the said interest at the sum of $500.

That said appraisers, in estimating the interest of defendant in said lands, did deduct from the real money value of said
24 lands the amount of said outstanding tax titles thereon, which they had no authority to do.

Whereby said appraisement was not made according to law and was void, and that all proceedings thereon based, to wit, the said sale to said Redick, the confirmation of such sale, and said deed to said Redick, were and are null and void, and that said Redick, the grantor of complainant herein, obtained no title to said lands thereby.

Third. Because the said order of sale directed and required said marshal to sell said lots with their appurtenances, while the said marshal, as this defendant avers, did not sell said lots with their appurtenances, but, regardless of said order of sale and contrary to the terms and directions thereof, said marshal sold only an interest in said lands, to wit, "that of occupancy and possession" only, whereby said sale and all proceedings thereon based became and were wholly null and void, and that said Redick, the grantor of complainant herein, obtained no title to said lands thereby.

Defendant further avers that at the time of the levy of said attachment said lots were worth more than the sum of $6,000.00, and that at said time said lots were appraised at more than $6,000, as more fully appears by a copy of said appraisement hereto attached, marked "Exhibit D," and made a part hereof, whereby it appears that the appraisers who made the appraisement in connection with said sale of said lands hereto attached, marked "Exhibit A," wholly ignored the real value of said lands, and that said last appraisement was fraudulent.

Defendant further avers that it is untrue that he made defense in the suit of Redick against him in this court that he, said Frost, had become a resident and citizen of Montana, but defendant avers
25 the fact to be that he is, and at all times since the commencement of each and all of the proceedings in said bill of complaint referred to has been, a married man, having a wife and daughter living with him and dependent upon him for support.

That said defendant has lived upon and occupied said lands as his home and homestead for more than ten years last past, and is now so occupying the same, and that defendant always has claimed and does now claim said lands as his homestead, and that he so notified said Redick and said marshal at the time of said sale.

Defendant avers that the said judgment of said Redick against this defendant, and under which said sale of said lands was made, was based upon and was obtained upon the written contract hereinbefore set forth between said Redick and said Frost, and that said contract was executed by said Frost alone, and was not signed or executed by the wife of said Frost, nor did said contract expressly stipulate that the homestead of defendant should be liable therefor

for any debt created by said contract; and defendant avers that said lots, being his homestead as aforesaid, were not liable to attachment, levy, or sale, under execution or otherwise, for any debt arising by virtue of said written contract, for the reason that said contract was not executed by both said Frost & wife, but only by said Frost alone, and did not expressly stipulate that such homestead should be liable for such debt, whereby said attachment and said sale and all proceedings based thereon were void, and said Redick, the grantor of complainant herein, obtained no title thereby.

Defendant avers that the question of the right of this defendant to said lots as his homestead and their exemption, as herein claimed, has never been passed upon by this court.

Defendant avers that the only title, if any, which said Redick, the grantor of complainant herein, had to said lots was based upon said sale under said judgment and attachment, and upon no other
26 ground, and was not based upon any conveyance or incumbrance to said Redick or any one signed or executed by both said Frost and wife.

And the said defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

Wherefore defendant prays that it may be adjudged and decreed by this honorable court that the said attachment of said lots and the said sale thereof, and the confirmation of said sale, and the said deed from said marshal to said Redick were and are null and void; and that said Redick acquired no title thereby to said lots; and that said complainant has no title to or interest in said lots or any part thereof, and that the title to said lots may be adjudged and decreed to be in this defendant and not in said complainant or said Redick, and that said lots may be adjudged exempt to this defendant, as hereinbefore claimed.

And this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint, and for such other and further relief as to this honorable court may seem just and equitable.

GEORGE W. FROST, *Defendant.*

WEBSTER & GAYLORD,
Solicitors for Defendant.

STATE OF NEBRASKA, } ss:
Douglas County }

George W. Frost, being duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

GEORGE W. FROST.

27 Subscribed in my presence and sworn to before me this 24th day of January, A. D. 1881.

[SEAL.] GEO. P. BEMIS,
Notary Public in and for Douglas County, Nebraska.

"EXHIBIT A."

Appraisement.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and John Campbell and John B. Furray, two disinterested freeholders, residents of Douglas county, State and district of Nebraska, the said freeholders being duly sworn by said marshal to make a true and impartial appraisement of the defendant's interest in the following property ordered to be sold by virtue of an order for sale on attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise said property at its real value in money, after deducting all prior liens thereon, to wit:

Omaha, Douglas Co., Neb.:

Lot 3, in block 52	50 00
" 4, " "	450 00
	$500 00

(The said defendant's only interest in said property, as appears by the records of Douglas Co., Neb., being that of occupancy and possession, we appraise the said interest as above.)

Given under our hands this 26th day of July, 1878.

WILLIAM DAILY,
Marshal of the United States for the District of Neb.,
28 By ELLIS L. BIERBOWER, *Deputy.*
JOHN CAMPBELL.
JOHN B. FURRAY.

"EXHIBIT B."

STATE OF NEBRASKA, } ss.:
Douglas County. }

To William Daily, U. S. marshal:

I, Wm. H. Ijames, clerk of the district court of said county, in compliance with the annexed application, do hereby certify that there are the following judgments of record in my office, which are liens upon the lands described in said application prior to the judgment of John I. Redick, plaintiff, *vs.* George W. Frost, defendant:

In an action in said court between George W. Frost, plaintiff, and The Union Pacific Railroad Company and others, defendants, adjudicated at the February term of said court, to wit, on the 28th day of March, 1876, it was decreed that the plaintiff deposit with the clerk $302.11, with interest from May 31, 1869, and upon his doing so Thomas C. Durant was to convey the property by you described to the said Geo. W. Frost. No part of said amount has been deposited, and an action in ejectment has been commenced in said court by the said Thomas C. Durant against the said Geo. W. Frost based upon said decree.

Witness my hand and official seal this 19th day of July, A. D. 1878.

[SEAL.] WM. H. IJAMES, *Clerk.*

Clerk's fee $2.00. Paid by U. S. marshal.

29 "EXHIBIT C."

TREASURER'S OFFICE, DOUGLAS COUNTY, NEB.,
OMAHA, *July* 20, 1878.

Wm. F. Heins, treasurer.

The following is a statement of county and city tax against lots 3 and 4, block 52, city of Omaha:

1877:

No. 3. Now delinquent, $19.00.
No. 4. do. 44.00.

No. 3. Sold to Thos. Bryant Sept. 9, 1874, for Co. & city tax, $76.46, who also paid 1876 Co. & city tax July 3, 1877, $46.73; the 1874 Co. & city tax June 4, 1875, $61.09; the 1875 Co. & city tax July 10, 1876, $66.00.

Total amount to redeem to date of deed, now due, $137.62.

Subsequent payments, without interest, $173.82.

1873:

No. 4. Sold to Thomas Bryant September 9, 1874, for Co. & city tax, $177.44, who also paid 1876 Co. & city tax July 31, 1877, $109.63; the 1874 Co. & city tax June 4, 1875, $134.39; the 1875 Co. & city tax Ap'l 29, 1876, $151.72.

Total amount to redeem to date of deed, now due, $319.39.

Subsequent payments, without interest, $395.14.

1872:

No. 3. Sold to Thos. Bryant Dec. 15, 1873, for Co. & city tax, for $62.80; deed issued Dec. 20, 1875.

30 No. 4. Sold to Thos. Bryant Sept. 3, 1873, for Co. & city tax, for $172.58; deed issued Sept. 13, 1875.

Amount to redeem to date, was due, $423.70.

No. 3. Tax paid by Thos. Bryant, holder tax title, Nov. 15, '76 (without interest to date), $56.75.

1871:

No. 4. Sold to Emily Saltert Dec. 23, 1875, for Co. tax, $156.03, and deed issued Jan'y 22, 1878.

1870:
No. 3. P'd by Thos. Bryant Nov. 16, 1876.
No. 4. (Without interest to date) over $278.91.
1869.—3 and 4. Paid by Thos. Bryant Nov. 16, '76, $295.78.
1868.—3 and 4. do. do. do. 102.70.
1867.—3 and 4. do. do. do. 181.90.

WM. F. HEINS, *Treasurer.*

"EXHIBIT D."

Appraisement and Inventory.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and S. A. Orchard, and Martin Dunham, two disinterested residents of Douglas county, State and district of Nebraska, the said residents being duly sworn by said marshal to make a true and impartial appraisement and inventory of the following property levied upon and taken by virtue of an attachment issued out of the circuit
31 court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, upon our oaths appraise and inventory said property as its real value in money, to wit:

1 carriage	$250 00
1 green rep parlor set	80 00
1 velvet " "	80 00
1 bed-room "	50 00
Lots 3 & 4, in block 52, city of Omaha, Douglas Co., Neb., { lot 3	2,000 00
	{ lot 4	4,000 00
Total	$6,460 00

Given under our hands this 31st day of July, 1877.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska,
By ELLIS L. BIERBOWER, *Deputy.*
S. A. ORCHARD.
M. DUNHAM.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. In equity. Martin Spitly *vs.* Thomas C. Durant *et al.* Answer filed Jan'y 25th, 1881. Watson B. Smith, clerk. Webster and Gaylord, sol's for def't Frost.

Thereupon, afterwards, at the January term of said court, on the 26th day of January, 1881, the following proceedings were had, as appear of record on folios 718 & 719, Journal F, of said court, to wit:

MARTIN SPITLY
vs.
THOMAS C. DURANT. } No. 8, G.

On motion of said plaintiff, by Messrs. Redick and Redick, his solicitors, it is ordered that the bill of complaint herein be, and the same is hereby, dismissed as to said defendant, Thomas Bryant.

MARTIN SPITLY
vs.
THOMAS C. DURANT *et al.* } No. 8, G.

The parties herein, by their counsel consenting thereto, it is ordered by the court that the order entered herein this day dismissing complainant's bill as to said defendant, Thomas Bryant, be, and the same is hereby, vacated and set aside, with leave to said Thomas Bryant to file his cross-bill herein *instanter*.

32 The defendants in said cross-bill are ruled to answer thereto in 10 days and plaintiff to reply in five days thereafter.

It is further ordered that said cause be, and the same is hereby, referred to D. G. Hull, Esq., master in chancery, to take testimony and report on the law and facts; testimony to be closed by April 15th proximo, and master to file his report by the first Monday in May next.

Thereupon, afterwards, to wit, on the 26th day of January, 1881, cross-bill of Bryant was filed in said case, which said cross-bill is in words and figures following, to wit:

Cross-Bill of Thomas Bryant.

In the Circuit Court of the United States within and for the District of Nebraska.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLY, CREDIT MOBILIER OF AMERICA, GEORGE W. FROST, and THOMAS C. DURANT, defendants. } No. 8, G.

The cross-bill of Thomas Bryant, the said complainant, against the said defendants, Martin Spitly, Credit Mobilier of America, George W. Frost, and Thomas C. Durant.

Cross-Bill.

In the Circuit Court of the United States for the District of Nebraska.

MARTIN SPITLY, Complainant.
vs.
THOMAS C. DURANT, CREDIT MOBILIER OF AMERICA, GEORGE W. FROST, and THOMAS BRYANT, Defendants.

To the honorable, the judges of the circuit court of the United States within and for the district of Nebraska, sitting in equity:

Humbly complaining, showeth unto your honors your orator, Thomas Bryant, that heretofore, on September 30th, 1880, the

33 said complainant filed his bill against said defendants in this court, in equity, whereby the said complainant seeks and prays a decree of this honorable court requiring said defendants, Thomas C. Durant and Credit Mobilier of America, to convey unto said complainant the legal title to the premises described in said complainant's bill, and also hereinafter described, and determining that said defendant, George W. Frost, has no interest, claim, or demand in or upon said property or any part thereof, and that the claim of your orator set out in said complainant's bill of complaint is a cloud upon the claimed title of said complainant to said premises, as well also as the record title of said defendant Durant, and further determining that all of said defendants have combined and confederated together to cloud up, injure, and depreciate the value of said property, and still further adjudging the said complainant to be the owner in fee-simple of said property and entitled to the possession and enjoyment thereof, and further praying for general equitable relief.

And your orator further showeth unto your honors that your orator, Thomas Bryant, is the owner in fee-simple and is entitled to the possession of all the real estate described in said complainant's bill of complaint, to wit, lots three (3) and four (4), in block (52), in the city of Omaha, in the county of Douglas, in the State of Nebraska.

That your orator's title, interest, claim, ownership, and estate in, and right of possession of said real estate arise out of and exist by reason of the following facts and circumstances, and are derived from and based upon the deeds and muniments of title hereinafter set forth and described, to wit:

That since prior to 1867 the said lots have been the subject of and liable to taxation, and every year since 1867, inclusive,
34 said lots have been assessed for taxation and taxes for each of said years have been levied thereon, and such taxes have been unpaid and have become delinquent, except as hereinafter alleged.

That the taxes of 1872 on said lots remaining unpaid, said lots were advertised for sale therefor, and on September 3rd, 1873, were offered for sale at public auction, at the office of the treasurer of Douglas county, Nebraska, for said taxes, and lot three (3) thereof was not sold for want of bidders, but lot four (4) thereof was sold to your orator, Thomas Bryant, for the sum of one hundred and seventy-two and $\frac{58}{100}$ dollars ($172.58), that being the amount due thereon for said taxes, costs, and charges, and the quantity sold being the least amount that would sell for the sum due thereon; that on the 15th day of December, 1873, said 1872 taxes still remaining unpaid on said lot three (3), it was sold by the treasurer of said county at private sale, at his office, to your orator, for the sum of sixty-two and $\frac{80}{100}$ dollars ($62.80), being the amount due for said taxes, costs, and charges; that on December 20th, 1875, the said lot three (3) not being redeemed from said sale for said 1872 taxes thereon, the treasurer of said Douglas county, Nebraska, upon presentation by your orator of his certificate of said sale and your orator's demand therefor, made, executed, and delivered to your

orator a tax deed of said lot three (3), which deed was attested by the signature of the clerk and the seal of said Douglas county, and was witnessed and acknowledged, and on December 20th, 1875, at 2¼ o'clock p. m., filed for record in the office of the clerk of said county, and duly recorded in book of deeds number 19, at page 349.

That on September 13th, 1875, the said lot four (4) not being redeemed from said sale for said 1872 taxes thereon, the said treasurer, upon presentation by your orator of his certificate of
35 said sale and your orator's demand therefor, made, executed, and delivered to your orator a tax deed of said lot four (4), which deed was attested by the signature of the clerk and the seal of said Douglas county, and was witnessed and acknowledged, and was on September 15th, 1875, at 11½ o'clock a. m., filed for record in the office of the clerk of said Douglas county, and recorded in book 18 of deeds, at page 590.

That on September 9th, 1874, your orator again purchased said lots for taxes thereon, to wit, the delinquent taxes of 1873, and paid on account thereof, including costs and charges, for lot three (3) the sum of seventy-six and $\frac{46}{100}$ dollars (876.46), and for lot four (4) one hundred and seventy-seven and $\frac{44}{100}$ dollars (8177.44), and certificates of such purchases were made and delivered to your orator, and said lots have never been redeemed therefrom.

That on June 4th, 1875, said Bryant, your orator, paid the unpaid and delinquent taxes of 1874 on said lot 4, amounting to one hundred and thirty-four and $\frac{39}{100}$ dollars (8134.39), and on said lot three (3), amounting to sixty-one and $\frac{9}{100}$ dollars (861.09), and receipts for said payments were made and delivered to your orator.

That on December 23rd, 1875, the taxes of 1871 on said lot four (4) remaining unpaid, and said lot having been advertised for sale therefor, and having been offered for sale therefor at public auction and not sold for want of bidders, was sold at private sale for said 1871 taxes, at the office of the treasurer of said Douglas county, to one Emily Satterthwait, for the sum of one hundred and fifty-six and $\frac{3}{100}$ dollars (8156.03), being the amount due for said taxes, including costs and charges.

That said Emily Satterthwait afterwards assigned to your orator the certificate of said sale to her, and on January 22d, 1878, said
36 lot four (4) not being redeemed from said sale, and due notice thereof having been given to the occupant of said lot, your orator presented said certificates to the treasurer of said Douglas county and demanded a tax deed of said lot four (4); that thereupon said treasurer made, executed, and delivered to your orator a tax deed of said lot four (4), which deed was attested by the signature of the clerk and the seal of said county, and was witnessed and acknowledged, and on January 24th, 1878, at 10½ o'clock a. m., was filed for record in the office of the clerk of said county and was recorded in book 23 of deeds, at page 620; that on April 29th, 1876, your orator paid the unpaid taxes of 1875 on lot four (4) of said real estate, amounting to one hundred and fifty-one and $\frac{72}{100}$ dollars (8151.72); that on July 10th, 1876, your orator paid the unpaid and delinquent county and State taxes of 1875 on said lot three (3)

amounting to thirty-one and $\frac{39}{100}$ dollars ($31.39); that on July 14th, 1876, your orator paid the delinquent city taxes on said lot three (3) of 1875, amounting to thirty-four and $\frac{61}{100}$ dollars ($34.61).

That on November 15th, 1876, your orator paid the delinquent taxes of the years 1867, 1868, 1869, & 1870 on both of said lots, and of 1871 on lot three (3) thereof, amounting to the following sums: 1867, taxes to one hundred and eighty-one and $\frac{90}{100}$ dollars ($181.90); 1868, taxes to one hundred and two and $\frac{70}{100}$ dollars ($182.70), said lots having been vacant and unimproved at the time of the assessment for and levy of the said taxes of 1867 & 1868, and having been assessed together as one tract, the same being of equal value.

1869, taxes to forty-three and $\frac{35}{100}$ dollars ($43.35) on lot three (3), and two hundred and fifty-two and $\frac{43}{100}$ dollars ($253.43) on lot four (4).

37 1870, taxes to sixty-eight and $\frac{82}{100}$ dollars ($68.82) on lot three (3), and to two hundred and ten and $\frac{9}{100}$ dollars ($210.9) on lot four (4); 1871, taxes to fifty-six and $\frac{75}{100}$ dollars ($56.75) on lot three (3).

That on July 31st, 1877, your orator paid the delinquent taxes of 1876 on said lot three (3), amounting to forty-six and $\frac{73}{100}$ dollars ($46.73), and on lot four (4), amounting to one hundred and nine and $\frac{3}{100}$ dollars ($109.03).

That the treasurer of said Douglas county made and delivered to your orator tax receipts for all of said foregoing described payments.

That on November 6th, 1878, the delinquent taxes of 1877 on said lots being unpaid, and said lots having been advertised for sale therefor, the same were sold separately for the separate amounts due on each thereof, at public auction, at the office of the treasurer of Douglas county, Nebraska, to one J. C. Noyes, and certificates of such sales were made and delivered to said Noyes by the said Douglas county treasurer; that the quantity of each lot so sold was the least amount that would sell for the sum due thereon.

That lot four (4) was sold for the sum of one hundred and four and $\frac{67}{100}$ dollars ($104.67), and lot three (3) for the sum of forty-five and $\frac{60}{100}$ dollars ($45.60), being the amount due on said lots returned delinquent for the non-payment of the taxes, costs, and charges of the said year 1877; that thereafter, for a valuable consideration, the said J. C. Noyes sold and assigned his certificates of said sales to your orator.

That on January 7th, 1880, J. W. Gannett purchased said lots for the delinquent taxes of 1878 due thereon, at private sale, at the office of the treasurer of Douglas county, paying for lot four (4)

38 one hundred and twenty and $\frac{76}{100}$ dollars ($120.76), and for lot three (3) fifty-two and $\frac{58}{100}$ dollars ($52.58), those being the amounts due on said lots returned delinquent for the non-payment of the taxes, costs, and charges of the year 1878, said lots having been offered at public auction for said taxes and not sold for want of bidders; that on May 3rd, 1880, your orator redeemed said lots from said sales thereof to said Gannett for said taxes of 1878, paying on said lot four (4) one hundred and twenty-eight and $\frac{70}{100}$ dol-

lars ($128.70), and on lot three (3) fifty-six and $\frac{30}{100}$ dollars ($56.30), and your orator now holds the certificates of such redemption.

And your orator further showeth unto your honors that more than three months prior to the time of redemption of said lots from the said sales thereof to said J. C. Noyes on November 6th, 1878, for the delinquent taxes of 1877 thereon, as above set forth, your orator served upon the said defendant, George W. Frost, who was then and ever since has been and now is the occupant of said lots, a notice of the expiration of said time of redemption thereof as required by law, and that after diligent inquiry and search said defendant, Thomas C. Durant, in whose name said lots were assessed for said taxes, could not be found in said Douglas county, Nebraska.

That on December 1st, 1880, said lots being still unredeemed from said sales and the time of redemption having expired, your orator presented his certificates of said purchases, with the evidence of his compliance with the law regulating the issuance of tax deeds attached thereto, to the treasurer of said Douglas county, and demanded a tax deed of said lots, whereupon said treasurer made, executed, and delivered to your orator a tax deed of said lots, which deed was witnessed and acknowledged, and on December 2nd, 1880, was filed for record and entered on the numerical index at 3 o'clock and 30 minutes p. m., and duly recorded in book of
39 deed records number 33, at page 469, in the office of the clerk of said Douglas county, Nebraska.

That the evidence upon which said deed was issued was also recorded and then filed for safe keeping in the treasurer's office of said Douglas county.

And your orator further showeth unto your honors that more than three years have elapsed prior to the commencement of this suit since the recording of the first three tax deeds hereinbefore described, and during said time said complainant has never had possession of said lots, whereby the said complainant is barred from maintaining his action, commenced by filing his bill of complaint, as hereinbefore alleged; and your orator well hoped that no disputes would have arisen touching the title to and right of possession of said lots, but that said complainant would have complied with the reasonable demands of your orator and abandoned his claims to said lots, and that said defendants, Durant, Credit Mobilier of America, and Frost, would have also abandoned their claim to said lots and have allowed your orator to quiet and peaceably take possession thereof. But now so it is, may it please your honors, that the said complainant and said defendants are contriving how to wrong and injure your orator in the premises, the said complainant claiming to be the owner of said lots, and the said defendants also claiming to own them, and both said complainant and said defendants denying the validity of your orator's title thereto and his right of possession thereof, all of which actings, doings, and pretences of said complainant and said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises.

Wherefore your orator submits that his title to said lots should

be quieted by a decree of this honorable court as against both said complainant and said defendants, and be adjudged to be perfect and valid as against all parties to this suit and all persons claiming under them.

To the end, therefore, that the said complainant and the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may, to the best and utmost of their several knowledge, information, remembrance, and belief, full, true, direct, and perfect answer make, though not under oath, answer under oath being hereby expressly waived, to all and singular the matters and things hereinbefore stated and charged, and that it may be, by the decree of your honors, declared that your orator's title to said real estate is perfect and valid as against all parties to this suit, and all persons claiming through, by, or under them, or either of them, and that your orator's said title may be forever quieted by a decree of your honors, and that said complainant may be required to pay the costs of this suit, and that he may have decreed to him by your honors all and such other and further relief as the circumstances of the case may require and as is agreeable to equity—

May it please your honors to grant unto your orators the most gracious writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Martin Spitly, Thomas C. Durant, Credit Mobilier of America, and George W. Frost, therein and thereby commanding them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before your honors in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein as to this court shall seem proper, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

GROFF, MONTGOMERY & BARTLETT,
Solicitors for Def't Bryant.

GROFF & MONTGOMERY,
Of Counsel.

Upon the back of said cross-bill appear endorsements in words and figures following, to wit: No. 8, G. United States circuit court for district of Nebraska. Thomas Bryant *vs.* Martin Spitly *et al.* Cross-bill of Thomas Bryant. Filed Jan. 26, 1881. Watson B. Smith, clerk. Groff & Montgomery, solicitors for complainant Bryant.

Thereupon, afterwards, at the January term of said court, on the 26th day of January, 1881, the following proceedings were had, as appears of record on folio 717, Journal F, of said court, to wit:

Order on Absent Defendants.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLY, THOMAS C. DURANT, CREDIT MOBILIER OF AMERICA, and GEORGE W. FROST, Defendants.

And now, on this 26th day of January, A. D. 1881, being at the January term, A. D. 1881, of the said court, it having been made to appear to the satisfaction of the said court that this is a suit commenced to enforce a lien upon real property within the said district, and that Martin Spitly, Thomas C. Durant, and Credit Mobilier of America are defendants herein, are not inhabitants of and have not been found within the said district, and have not voluntarily appeared in this suit, on motion of Groff and Montgomery and Bartlett, solicitors for the said complainant, it is considered by the court and ordered that the said defendants above named be, and are hereby, directed to appear and plead, answer or demur, to the complainant's bill of complaint on or before the 4th day of April, 1881, being the first Monday in April, A. D. 1881, and that in default thereof an order be entered in this cause taking the said bill *pro confesso*.

It is further ordered by the court that at least twenty days before the said April 4th a copy of this order be served
42 upon the said defendants, wherever found, if practicable, and also upon the person or persons in possession or charge of the real property described in complainant's bill of complaint, if any there be; or, if such personal service be not practicable, that this order be published in the Omaha Weekly Republican once a week for six consecutive weeks prior to said April 4th, 1881.

(S'g'd) ELMER S. DUNDY, *Judge*.

Thereupon, afterwards, at the January term of said court, on the 28th day of January, 1881, the following proceedings were had, as appears of record on folio 726, Journal F, of said court, to wit:

MARTIN SPITLY
vs.
THOMAS C. DURANT *et al.* } No. 8, G.

Upon due consideration of the application of Abby Frost, leave is hereby granted her to become a party defendant to this suit, with leave to said Abby B. Frost and Geo. W. Frost to file their cross-bill herein *instanter*.

Said Martin Spitly [is] ruled to answer said cross-bill in ten days, and said Frost to reply thereto in fifteen days, and testimony to be completed by the middle of April next, these being the conditions upon which said Frosts are allowed to file their cross-bill.

Thereupon, afterwards, to wit, on the 28th day of January, 1881, a cross-bill was filed in said case, which said cross-bill is in words and figures following, wit:

Cross-Bill.

In the Circuit Court of the United States, District of Nebraska. In Equity.

MARTIN SPITLY, Complainant,

vs.

THOMAS C. DURANT *et al.*, Defendants.

To the honorable the judges of said court:

The cross-bill of George W. Frost and Abby B. Frost to the bill of complaint of said complainant, Martin Spitly, leave having been first granted by your honors to file the same, respectfully shows unto your honors—

First. That your orators, said George W. Frost and Abby B. Frost, are and for the last thirty years have been husband and wife, and that, together with a daughter of your orators, [they] have resided in Omaha, Douglas county, Nebraska, for about fifteen years last past, and that your orators have not given up their residence in said Omaha at any time during said period, nor have they been absent therefrom during said time except on visits to friends in the East, and for the period of about eighteen months, when your orators were temporarily absent in the Territory of Montana, as will more fully appear hereafter in your orators' cross-bill; that neither
13 of your orators have at any time during the last fifteen years relinquished or given up their residence in the said Omaha. That it is untrue that said George W. Frost made defense in the said suit of said Redick against him that he, said Frost, had become a resident and citizen of the Territory of Montana.

But your orators aver that for the period of about eighteen months, commencing about July the first, 1877, your orators and their daughter were absent from said Omaha, and were at Crow Indian agency, Montana; that the cause of said absence was the fact, which your orators aver, that said George W. Frost had been appointed and during said eighteen months was acting as an officer of the United States, to wit, Indian agent at said Crow agency, and that his official duties required his presence there during said time. But your orators aver that such absence was only temporary and for the cause aforesaid, and that neither said George W. Frost nor Abby B. Frost had any thought or intention of abandoning their said residence in Omaha, and they did not relinquish the same, and they at once returned to Omaha when said George W. Frost had completed his said official duties.

That during their said temporary absence in Montana Territory the said home of your orators was not rented, but was occupied by parties placed their simply to take care of the same, and that said parties did not pay nor were they charged any rent therefor, and that neither of your orators took with them any of their household goods; that your orator, Abby B. Frost, refused to accompany her said husband to Montana until she had been advised by counsel that they would not, by such temporary absence, lose or relinquish

their residence in said Omaha nor their homestead in the property hereinafter described and occupied by them as a home.

Your orators further aver the fact to be that at all times since
44 the commencement of and during the pendency of each and all of the proceedings in said bill of complaint of Martin Spitly referred to said George W. Frost has been and now is a married man and the head of a family, having his wife as aforesaid and a daughter living with him and dependent upon him for support; that during each and all of said times, and for about fifteen years last past, said George W. Frost, with his said wife, being this your orat*or*, Abby B. Frost, and their said daughter, hav*ing* lived upon occupied, and claimed the lots mentioned in said bill of complaint, to wit, lots three and four, in block number fifty-two, in the city of Omaha, Nebraska, as their home and homestead, and do now so occupy and claim the same; that at no time during said period has your orat*or*, Abby B. Frost, or her said husband given up or relinquished or abandoned their said homestead, nor have they had nor have they now any thought or intention of so doing, but that during all of said time they have meant to and do now mean to maintain the same as their homestead, and that said two lots lie adjoining each other and in the city of Omaha and within the corporate limits thereof.

Your orators further aver that the said judgment of said Redick against said George W. Frost, and under which the sale of said lots to said Redick was had, was based upon a written contract and upon no other foundation, and that said contract was executed by said Redick and said George W. Frost alone and not by your orat*or*, Abby B. Frost, but that your orat*or*, Abby B. Frost, in no way signed nor executed said contract, nor was your orat*or* a party thereto in any way, nor did said contract expressly stipulate that said homestead should be liable therefor or for any debt or obligation arising under said contract, nor was your orat*or* a party to the said suit of said Redick against said Frost in which said judgment was obtained and said sale had. And your orators aver that
45 the said lots, being the homestead of said George W. Frost and your orat*or*, Abby B. Frost, as hereinbefore set forth and claimed, *was* not liable for and could not lawfully be sold for any debt or obligation whatever created by said contract, or any judgment obtained by virtue of said contract, for the reason that the said contract was not executed or signed by your orat*or*, Abby B. Frost, nor was she a party thereto, nor did said contract, expressly or otherwise, stipulate that said homestead should be liable for said contract or for any debt or obligation arising thereunder.

That your orat*or*, Abby B. Frost, was and is one of the two parties by whom alone, and only by the joint action of whom and George W. Frost, said homestead could be conveyed away or in any way encumbered or made liable, and that said lots, being the homestead of said George W. Frost and Abby B. Frost as aforesaid, and being by them so occupied and claimed as aforesaid during all the times hereinbefore mentioned, were wholly exempt from attachment,

levy, or sale under execution or otherwise by virtue of the laws of the State of Nebraska.

Your orator avers that, for the reasons hereinbefore set forth, the said attachment of said lots and the said sale thereof to said Redick, and any and all other proceedings based thereon, were and are null and void, and that said Redick obtained no title to said lots thereby; that the only title to or interest in said lots, if any, which said Redick, the grantor of said complainant, Martin Spitly, has or had was based upon this purchase of said lots at said sale thereof and the deed of said marshal to said Redick, but your orator avers that said Redick obtained no title to or interest in said lots thereby: that said Redick, the grantor of the complainant, Martin Spitly, has not, nor has he ever had, any title to or interest in said lots by virtue of any
46 contract, conveyance, or incumbrance of any kind executed, concurred in, or signed jointly by your orator and said George W. Frost. Your orators aver that the question of the homestead rights of said George W. Frost and your orator, as herein claimed, have never been passed upon by this honorable court.

That said John I. Redick knew all said facts as to the homestead rights of your orators during all the time of said proceedings and at the time of his purchase, and was personally notified, as was also the marshal, in making said sale that your orators claimed said lots and appurtenances as their homestead, and that the same were not subject to such sale.

Your orators further aver that said suit of John I. Redick against said George W. Frost was commenced and prosecuted to judgment, and said sale of said lots made during the absence of your orators from Omaha, and while they were temporarily at Crow agency, in Montana as aforesaid, whereby they were prevented from presenting their homestead claim in person to stay such sale.

Your orators further show to your honors that said Redick acquired no title to said lots by virtue of said sale by the marshal and the purchase thereof by said Redick for the following reasons:

First. Because, as appears by the appraisement made under the order of sale and hereto attached, marked "Exhibit A," and made a part hereof, that said appraisers found that said Frost had no title, legal or equitable, in said lands, but "that the said defendant's only interest in said property, as appears by the records of Douglas county, Nebraska, being that of occupancy and possession, we appraise the said interest as above," to wit, at the sum of five hundred dollars.

This defendant avers that such an interest, to wit, possession and occupancy, without any interest in the lands, is not the subject of sale under an order of sale in such case, and that all proceedings based on such appraisement, to wit, the sale and deed to said Redick, are null and void.

Second. Because, as appears by said appraisement, a copy of which is hereto attached, marked "Exhibit A," the marshal ob-
47 tained from the officers of said Douglas county the certificates by law required, one of which certificates, to wit, that of the clerk of the district court of the said county, a copy of which is

hereto attached, marked "Exhibit B," and made a part hereof, shows that the said sum of $302.11, with interest thereon, as provided by said decree to be paid by said Frost, had not at the date of said certificate been deposited with the said clerk, as more fully appears from said "Exhibit B," and the other of which certificates, to wit, that of the treasurer of said county, a copy of which is hereto attached, marked "Exhibit C," and made a part thereof, shows that said lots had, before the date of said certificate, been sold for delinquent and unpaid taxes thereon, and that tax deeds thereto had been executed to the purchasers of said lots at such tax sales, and also shows the different amounts for which said lots had been so sold, and other delinquent taxes paid thereon by such purchasers, as more fully appears by said "Exhibit C," and that said appraisers in making said appraisements did not estimate said lands at their real value in money and then deduct from such real value any and all liens thereon in order to ascertain the interest of defendant in said lands as required by law; and defendant avers that said appraisers did not estimate the real value in money of said lands, and then find and estimate the amount of liens existing thereon, and then deduct from the real money value of said lands the amount of such liens, as by law required, to ascertain the interest of defendant in said lands, but that said appraisers found the interest of defendant in said lands to be "that of occupancy and possession" only, and appraised the said interest at the sum of five hundred dollars; that said appraisers in estimating the interest of defendant in said lands did deduct from the real money value of said lands the amount of said out-
48 standing tax titles thereon, which they had no authority to do, whereby said appraisement was not made according to law, and was void, and that all proceedings thereon based, to wit, the said sale to said Redick, the confirmation of such sale and said deed to said Redick, were and are null and void, and that said Redick, the grantor of complainant herein, obtained no title to said lands thereby.

Third. Because the said order of sale directed and required said marshal to sell said lots with their appurtenances, while the said marshal, as this defendant avers, did not sell said lots with their appurtenances, but, regardless of said order of sale and contrary to the terms and directions thereof, said marshal sold only an interest in said lands, to wit, "that of occupancy and possession" only, whereby said sale and all proceedings thereon based became and were wholly null and void, and that said Redick, the grantor of complainant herein, obtained no title to said lands thereby.

Defendant further avers that at the time of the levy of said attachment and at the time of said sale said lots were worth more than the sum of $600,000, and that at said time said lots were appraised at more than $6,000, as more fully appears by a copy of said appraisement hereto attached, marked "Exhibit B," and made a part hereof, whereby it appears that the appraisers, who made the appraisement in connection with said sale of said lands hereto attached, marked Exhibit "A," wholly ignored the real value of said lands, and that said last appraisement was fraudulent.

Your orators further show your honors that after the sale of lots to said Redick by the United States marshal on said order of sale, and after making of the deed to said Redick that your orators acquired a full and complete title to said lots, which is subsequent to and paramount to any claim of said Redick or his grantee.

49 That under the decree of the district court in complainant's bill set out your orators were not entitled to a deed to said premises until the payment of the moneys provided for in said decree, and that subsequent to said sale and deed to said Redick said moneys so provided for to be paid has been paid, whereby your orators became and are entitled to a deed in fee-simple for said premises.

Your orators further show that said complainant, Martin Spitly, has no interest in said land; that his pretended claim and ownership to said land is fraudulent, and is made for the purpose of defrauding your orators of their claim, interest, and title in and to said lands.

Your orators therefore humbly prays that *it* may be adjudged and decreed by this honorable court that the said attachment of said lots and the said sale thereof to said Redick, the confirmation of said sale, the said deed of said lots from the marshal to said Redick were and are null and void; and that said Redick obtained no title to or interest in said lots by virtue of said proceedings, and that neither said Redick nor said complainant, Martin Spitly, ever had and have not now any title to or interest in said lots, but that the title to said lots was and is in said George W. Frost, and that the same were and are now exempt to your orators as a homestead, and that the homestead rights of your orators therein have not been lost or relinquished by your orators, but that your orators still holds and retains their homestead rights therein; that said deeds to said Redick and from said Redick to said Martin Spitly may be declared null and void, and that they be decreed to reconvey to said George W. Frost said lands, and that in default thereof that such deed be made by a master of this court.

That said Durant deed, the Credit Mobilier of America,

50 may be ordered and decreed to quit-claim to your orators.

And for such other and further relief as the court shall deem proper and equitable in the premises.

And may it please your honors to grant unto your orators the *right* of subpœna, to be issued out of and under the seal of the court, to be directed to Martin Spitly, Thomas C. Durant, Credit Mobilier of America, and Thomas Bryant, and to answer all and singular the premises in this behalf, and to stand and abide such orders and directions and decrees in the premises as shall be made therein.

And your orators, as in duty bound, will ever pray.

WEBSTER AND GAYLORD,
Solicitors for George W. Frost and Abby B. Frost.

"EXHIBIT A."

Appraisement.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and John Campbell and John B. Furray, two disinterested freeholders, residents of Douglas county, State and district of Nebraska, the said freeholders being duly sworn by said marshal to make a true and impartial appraisement of the defendant's interest in the following property ordered to be sold by virtue of an order for sale on attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do, upon our oaths, appraise said property at its real value in money, after deducting all prior liens thereon, to wit:

51 Omaha, Douglas county, Neb.:

Lot 3, in block 52	50 00
" 4, " "	450 00
Total	500 00

(The said defendant's only interest in said property, as appears by the records of Douglas Co., Neb., being that of occupancy and possession, we appraise the said interest as above.)

Given under our hands this 26th day of July, 1878.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska.
By ELLIS L. BIERBOWER, *Deputy.*
JOHN CAMPBELL.
JOHN B. FURRAY.

"EXHIBIT B."

STATE OF NEBRASKA, } ss:
Douglas County, }

To William Daily, U. S. marshal:

I, Wm. H. Ijams, clerk of the district court of said county, in compliance with the annexed application, do hereby certify that there are the following judgments of record in my office, which are liens upon the lands described in said application prior to the judgment of John I. Redick, plaintiff, against George W. Frost, defendant:

In an action in said court between George W. Frost, plaintiff, and the Union Pacific Railroad Company and others, defendants, adjudicated at the February term of said court, to wit, on the 28th day of March, 1876, it was decreed that the plaintiff deposit with the clerk $302.11, with interest from May 31st, 1869, and upon his doing so Thomas C. Durant was to convey the property by you described to the said George W. Frost. No part of said amount has been

52 deposited, and an action in ejectment has been commenced in said court by the said Thomas C. Durant against the said George W. Frost based upon said decree.

Witness my hand and official seal this 19th day of July, A. D. 1878.

[SEAL.] W. H. IJAMS, *Clerk.*

Clerk's fees, $2.00. Paid by U. S. marshal.

"EXHIBIT C."

TREASURER'S OFFICE, DOUGLAS COUNTY, NEB.,
OMAHA, *July 20th*, 1878.

Wm. Heins, treasurer.

The following is a statement of county and city tax against lots 3 and 4, block 52, city of Omaha:

1877:

No. 3. Now delinquent, $19.00.
No. 4. do. 44.00.

1873:

No. 3. Sold to Thomas Bryant Sept. 9, 1874, for Co. & city tax, $76.46, who also paid 1876 Co. & city tax July 3, 1877, $46.73; the 1874 Co. & city tax June 4, 1875, $61.09; the 1875 Co. & city tax July 10, 1876, $66.00.

Total amount to redeem to date of deed, now due, $137.62.

Subsequent payments, without interest, $173.82.

No. 4. Sold to Thomas Bryant Sept. 9, 1874, for Co. & city tax, $177.44, who also paid 1876 Co. & city tax June 3, 1877, $109.03; the 1874 Co. & city tax June 4, 1875, $134.39; the 1875 Co. & city tax Ap'l 29, 1875, $151.72.

53 Total amount to redeem to date of deed, now due, $319.39.

Subsequent payments, without interest, $395.14.

1872:

No. 3. Sold to Thomas Bryant Dec. 15, 1873, for Co. & city tax for $62.80; deed issued Dec. 20, 1875.

No. 4. Sold to Thomas Bryant Sept. 3, 1873, for Co. & city tax for $172.58; deed issued Sept. 13, 1875.

Amount to redeem to date when deed was due, $423.70.

1871:

No. 3. Tax paid by Thomas Bryant, holder [of] tax title, Nov. 15, '76 (without interest to date), $56.75.

No. 4. Sold to Emily Saltert Dec. 23, 1875, for Co. tax, $156.03, and deed issued Jan'y 22, 1878.

1870:

No. 3. P'd by Thos. Bryant Nov. 16, 1876, without interest to date, over $278.91.

1869.—3 and 4. Paid by Thos. Bryant Nov. 16, '76, $295.78.
1868.—3 and 4. do. do. do. 102.70.
1867.—3 and 4. do. do. do. 181.90.

WM. HEINS, *Treasurer.*

"EXHIBIT C."

Appraisement and Inventory.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and S. A. Orchard and Martin Dunham, two disinterested residents of Douglas county, State and district of Nebraska, the said resi-
54 dents being duly sworn by said marshal to make a true and impartial appraisement and inventory of the following property levied upon and taken by virtue of an attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, upon our oaths appraise and inventory said property at its real value in money, to wit:

1 carriage	$250 00
1 green rep parlor sett	80 00
1 velvet " "	80 00
1 bed-room "	50 00
Lots 3 & 4, in block 52; lot 3	2,000 00
City of Omaha, Douglas Co., Neb., lot 4	4,000 00
Total	$6,460 00

Given under my hand this 31st day of July, 1877.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska,
By ELLIS L. BIERBOWER, *Deputy.*
S. A. ORCHARD.
M. DUNHAM.

28 January, 1881.—Abby B. Frost allowed to become a party defendant to suit above stated, and she and George W. Frost, defendant, allowed to file this cross-bill.

ELMER S. DUNDY, *Judge.*

Upon the back of said cross-bill appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. In equity. Martin Spitly *vs.* Thomas C. Durant *et al.* Cross-bill. Filed Jan. 28, 1881. Watson B. Smith, clerk. Webster & Gaylord, sol's for def't Frost.

55 Thereupon, afterwards, to wit, on the 28th day of January, 1881, certified copy of order for appearance of absent defendants was filed in said cause, which said certified copy of order is in words and figures following, to wit:

At a session of the circuit court of the United States for the district of Nebraska, continued and held pursuant to adjournment, at the United States court-room in the city of Lincoln, on the 26th

day of January, 1881, the Honorable Elmer S. Dundy, judge, being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

Order on Absent Defendants.

In the Circuit Court of the United States for the District of Nebraska.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLY, THOMAS C. DURANT, CREDIT MOBILIER OF AMERICA, and GEORGE W. FROST, Defendants.

And now, on this 26th day of January, A. D. 1881, being at the January term, A. D. 1881, of the said court, it having been made to appear to the satisfaction of the said court that this is a suit commenced to enforce a lien upon real property within the said district, and that Martin Spitly, Thomas C. Durant, and Credit Mobilier of America, defendants herein, are not inhabitants of and have not been found within the said district, and have not voluntarily appeared in this suit, on motion of Groff and Montgomery & Bartlett, solicitors for said complainant, it is considered by the court and ordered that the said defendants above named be, and are hereby, directed to appear and plead, answer or demur, to the complainant's bill of complaint on or before the 4th day of April, 1881, being the first Monday in April, A. D. 1881, and, in default thereof,
56 an order be entered in this cause taking the said bill *pro confesso*.

It is further ordered by the court that at least twenty days before the said April 4th a copy of this order be served upon the said defendants wherever found, if practicable, and also upon the person or persons in possession or charge of the real property described in complainant's bill of complaint, if any there be; or, if such personal service be not practicable, that this order be published in the Omaha Weekly Republican once a week for six consecutive weeks prior to said April 4th, 1881.

(Signed) ELMER S. DUNDY, *Judge*.

THE UNITED STATES OF AMERICA, }
District of Nebraska, } *ss*:

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause therein entitled; that I have compared the same with the original entry of said order, and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Lincoln, in said District, this 26th day of January, A. D. 1881.

[SEAL.] WATSON B. SMITH, *Clerk*.

Attached to said order is the return of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 26th day of January, 1881, I received this order, and on the 26th day of January, 1881, I served the same upon George W. Frost, the person in possession of the real property described in complainant's bill of complaint (by acceptance endorsed by Webster & Gaylord), in Lancaster county,
57 State and district of Nebraska.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska.

Marshal's costs, $2.00.

Upon the back of said order appear endorsements in words and figures following, to wit: No. 8, doc. G. United States circuit court for the district of Nebraska. In chancery. Thomas Bryant *vs.* Martin Spitly *et al.* Certified copy of order for appearance of absent defendants. Filed Jan. 28, 1881. Watson B. Smith, clerk. *I* hereby accept service of this order. Webster & Gaylord, att'ys for defendant, Geo. W. Frost.

Thereupon, afterwards, to wit, on the 3rd day of February, 1881, an answer of Spitly to cross-bill of Bryant was filed in said case, which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

The answer of Martin Spitly to the cross-bill filed herein by the respondent, Thomas Bryant.

This respondent, now and at all times hereafter, saving and reserving unto himself all benefit or advantage, by way of exception or otherwise, which can or may be had or taken to [the] many errors, uncertainties, and imperfections in said cross-bill contained, for answer thereunto, or to such and so much thereof as this respondent is advised is or are material or necessary for him to make answer unto, answering, saith—

That it is untrue that the said Bryant is the owner in fee-simple to the lots in question or either of them, or entitled to the possession thereof, as in said bill stated.

Respondent admits that said lots, in the year 1867 and subsequent thereto, *they* were subject and liable to taxation and taxes had
58 been assessed against each of them for said years, but distinctly denies that for either of said years said lots or either of them had been legally assessed for taxes, and especially for the year 1871; denies that they were legally advertised for sale for either of said years for the non-payment of said taxes, as set forth in the bill, but alleges the fact to be that from the year 1868 up to and including the year 1879, and at all times intervening between said dates, there was sufficient personal property on said lots, consisting of household furniture, horses, carriages, cattle, etc., and more, to pay all taxes assessed against said lots or either of them, which facts were well

known to the county treasurers of said county, and that no effort was made whatever to make said taxes from said personalty, and charges the fact to be that if said lots or either of them were advertised to be sold for delinquent taxes thereon, and pretended to have been sold to said Bryant, every act in that behalf by said county treasurer was without authority of law and void, and if said Bryant paid any taxes upon said lots they were paid by him voluntarily and without the authority of said Frost or any one else; that the said treasurers had no authority to sell said lots or either of them, at public auction or otherwise, or to issue to said Bryant a certificate of said sale to said lots or either of them, or to execute to said Bryant a deed or deeds to said lots or either of them, but that every act in and about the levy, assessment of taxes on said lots, advertising them for sale, selling them or either of them, making deeds to them or either of them, was without authority of law, irregular, and void, and that no title whatever passed to said Bryant by reason thereof; as well also was void the assessment, advertisement, sale, and certificate of purchase made to one Emily Satterthwait for
59 pretended delinquent taxes of 1871 on said lot four, and the said Bryant received nothing by her said assignment to him; and as well also was void the deed taken by said Bryant from the treasurer of said county under said pretended sale.

And this respondent alleges the fact to be that the levy and assessment of taxes on said lots for the years 1867, 1868, 1869, 1870, 1871, were irregular, illegal, and void, and all pretended delinquent taxes alleged to have been paid prior to the year 1872 were paid voluntarily by said Bryant, if at all, and without the authority of this respondent or any one else, and that the taxes of 1867 and 1868 were void for the additional reason that the levy was made upon said lots together instead of separately.

And this respondent further alleges that the pretended delinquent tax of 1876 on said lots was paid, if at all, by said Bryant, voluntarily and without any authority.

And this respondent further represents that the taxes on said lots for the year 1877, the assessment, advertisement, sale of the same to J. C. Noyes, the issuing of certificate, and every act in and about them was illegal, irregular, without authority of law, and void.

This respondent further alleges that the assessment, levy, and sale of said lots for the pretended tax of 1878 to J. W. Gannett were illegal, irregular, without authority of law, and void.

And this respondent denies that the said Frost was the occupant of said property in the years 1877 and 1878, and denies that any legal or proper notice was given to said Frost or any other person that the time of redemption of said lots would expire, but alleges that this respondent's grantor, John I. Redick, was the owner of said property in fee-simple in the year 1878, and held an attachment thereon in the year 1877, which property was afterwards
60 sold under said attachment and said Redick became the purchaser thereof, and that the said Bryant well knew those facts,

but never notified this respondent's grantor of his intention to take out said tax deeds.

And this respondent denies that three years have elapsed since the recording of the first three tax deeds mentioned in said cross-bill.

That they were not deeds, but were clouds upon the title, and denies that this respondent is barred by the statutes of limitations from defending against said pretended deeds.

And this respondent, further answering, says that the said Frost took possession of said lots in the year 1868, erected a fence around the same, erected a dwelling-house, planted trees, built outhouses and barns, and made other improvements, in all to the value of from four to six thousand dollars; that he occupied said premises with his family until about the year 1876, when he left the State with his family to reside in Montana and did not return until about the year 1878. During all these years, including those he was absent, there was sufficient personal property, as hereinbefore stated, in the house and on the premises, to pay the taxes against said lot; that said Bryant has never been in possession of said lots or either of them.

And this respondent alleges that he is the owner of said property in fee-simple and entitled to the possession thereof.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by said cross-bill charged, without this, that there is any other matter, cause, or thing in said cross-bill contained material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready to aver, maintain, and prove as this
61 honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MARTIN SPITLY,
By REDICK & REDICK,
His Solicitors & of Counsel.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 8, G. Circuit court of the U. S., district of Neb. In chancery. The answer of Martin Spitly to the cross-bill filed herein by Thomas Bryant. Filed Feb. 3, 1881. Watson B. Smith, clerk. Redick & Redick, sol's & of counsel for Spitly.

Thereupon, afterwards, to wit, on the 3rd day of February, 1881, the replication of Martin Spitly to the separate answer of Thomas Bryant was filed in said case, which said replication is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

The replication of the complainant, Martin Spitly, to the separate answer of Thomas Bryant, one of the respondents.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said respondent is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained *or* material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

MARTIN SPITLY,
[By] REDICK & REDICK,
His Sol's & of Counsel.

62 Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, G. Circuit court U. S., district of Nebraska. In chancery. The replication of Martin Spitly to the separate answer of Thomas Bryant. Filed Feb'y 3, 1881. Watson B. Smith, clerk. Redick & Redick, sol's & of counsel for complainant.

Thereupon, afterwards, to wit, on the 3rd day of February, 1881, the replication of the complainant, Martin Spitly, to the separate answer of Geo. W. Frost was filed in said case, which said replication is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

The replication of Martin Spitly, complainant, to the separate answer of George W. Frost, one of the respondents.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of said respondent is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by said bill he hath already prayed.

MARTIN SPITLY,
By REDICK & REDICK,
Sol's & of Counsel for Complainant.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, G. Circuit court U. S., dist. of Neb. In chancery. The replication of the complainant,
63 Martin Spitly, to the separate answer of Geo. W. Frost. Filed Feb'y 3, 1881. Watson B. Smith, clerk. Redick and Redick, sol's & of counsel for complainant.

Thereupon, afterwards, at the January term of said court, on the 9th day of February, 1881, the following proceedings were had as appear of record on folio 772, Journal F, of said court, to wit:

MARTIN SPITLY
vs. } No. 8, G.
THOMAS C. DURANT *et al.*

On motion of said plaintiff, by his counsel, leave is hereby given him to file his answer to the cross-bill of George W. and Abby B. Frost instanter.

Thereupon, afterwards, to wit, on the 9th day of February, 1881, the answer of Martin Spitly to the cross-bill of G. W. and Abby B. Frost was filed in said case, which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

The separate answer of Martin Spitly to the cross-bill filed herein by Abbie Frost and George W. Frost.

This respondent, now and at all times hereafter, saving and reserving unto himself all and all manner of benefit or advantage which can or may be had or taken by way of exception or otherwise to the many errors, uncertainties, and imperfections in said cross-bill contained, for answer thereunto, or to so much and such parts thereof as he is advised by counsel it is necessary or material for him to make answer unto, answering, saith:

That it is untrue that the said George W. Frost and Abbie Frost never gave up their residence in Omaha, but have resided there for the past fifteen years or more; but respondent alleges the
64 fact to be that about July 1st, 1877, the said George W. Frost accepted the appointment of Indian agent in the Territory of Montana, and, under the rules and regulations of the Government in and about such appointment, he was obliged to, consented to, and did, about the date aforesaid, leave said State of Nebraska with his family to reside in Montana, and did there reside for about eighteen months or more, and, if he had conducted himself properly, would have been there yet with his family. Defendant denies that said Frost returned to Omaha when he had completed his official duties, but charges that he returned much sooner, but at such time and as soon as the Government discovered it was to its interest and the interest of the Indian that he should go home with his family. And this respondent alleges that the said complainants

never had any homestead in said property, but got possession thereof through the Credit Mobilier of America and held it until about July 1st, 1877, and never paid any taxes on said property, but about the date aforesaid left the State, leaving some household goods in said property, and having disposed of all their other personal property, consisting of horses, cattle, etc.: that their absence was not temporary, but intended to be permanent.

And respondent alleges that said Abbie Frost and George W. Frost never had any legal title to said lots or either of them, but alleges that by the legal proceedings set out in this respondent's bill of complaint in this action, and by the judgment, the said Frost had the right and could have obtained the legal title thereto by the payment into court of about the sum of $375.00; but, for the sole and only purpose of defrauding said Redick out of his fee for services in procuring said judgment of the court under the contract in said cross-bill set out, he refused to pay said [sum] or allow any one else to pay it for him, and thereby let said decree or judgment
65 lapse, but immediately made some fraudulent arrangement with said Durant and said Credit Mobilier that they should convey the legal title to said — by reason of said judgment or decree to him or to some one of his family, which deed was to be left in the hands of some one and kept from record, to be delivered to Frost or his confederate when he demanded it, which arrangement this respondent alleges was carried out, and for the express purpose of defrauding said Redick from the collection of his claim.

Respondent admits that Abbie Frost did not sign the contract referred to in said bill between George W. Frost and said Redick, but alleges that she knew all of its terms; often consented with said Redick concerning said litigation; was a witness in said suit; took as active a part as said Frost in said litigation, and in every way recognized and ratified said agreement; and respondent alleges that at the time of said agreement the title stood in the name of said Thomas C. Durant, and still stands so on the records of said county.

And this respondent denies that the attachment of said lots by said Redick sale of said premises were void, as alleged in said bill, but charges the fact to be that the attachment sale of said premises, and all the proceedings connected therewith, including the confirmation of sale, were regular and valid, and that the said Redick, by said sale and purchase, took and conveyed all interest of every kind and nature of *the* George W. and Abbie Frost in and to said lots, including their possession, if any they had, and that thereby the said Redick became the owner of the interests of the said Frosts in said property.

And this respondent further alleges that the rights of said complainants in this honorable court to every claim therein set up by them to said property have been passed on by this honorable court in the case of John I. Redick against George W. Frost, upon
66 the merits thereof, as will more fully appear by the records of this honorable court, to which this respondent begs leave to refer, and here pleads said proceedings in bar of the claims set up

in said cross-bill by said George W. and Abby Frost, and charges that the same is *res adjudicata*.

And respondent further alleges that the regularity of the proceedings, aside [from] the valuation of said property, deducting liens and in arriving at the true interest of said Frosts in and to said property, was adjudged by this honorable court to be in all respects regular, and that the sale was confirmed and the marshal directed to make a deed to the purchaser, which was done, and pleads the same and the action of the court thereon as *res adjudicata* upon all said questions.

Admits that the marshal by the order of sale was directed to sell said lots and their appurtenances, and denies that he disobeyed the terms of said order, and denies that said Redick obtained no title by said proceedings. Denies that said lots were worth $6,000.00, and denies that the plaintiff's interest therein was worth $500.00, the amount paid therefor. Denies most distinctly that the said Frost ever paid the amount of said decree—$302.11 and interest—to the clerk of said court, but alleges the fact to be that in the attachment suit of said Redick against Frost in this honorable court under the contract set forth in the cross-bill the court directed the jury that in finding the amount due said Redick upon said contract they should deduct the $302.11, with interest thereon from the date of said decree or judgment, which was done by the jury, and the said Redick recovered of said Frost a judgment for the amount [of] his due, less that sum.

And this respondent alleges that after the purchase of said premises by said Redick at the marshal's sale aforesaid, in order to
67 perfect his title to said premises, by consent of said Durant and the Credit Mobilier of America, he paid the full amount of said judgment or decree to the clerk of said court, being about the sum of $654.00; that he did not pay the same for said Frost or at his request, but to make perfect his own title, and for no other purpose; and denies that Frost obtained any benefit or title in or to said premises thereby, and denies that he is entitled to any deed of said premises by reason of said payment or in any other way.

Further answering, this respondent says that he is the true and lawful owner of said premises; that he bought the same in good faith, and knew nothing of the claims or pretences of the said Frost; that he gave said Redick for his interest in said property four hundred acres of land, worth at least three thousand dollars, knowing, however, that there were taxes back upon said premises, and that there would be some litigation concerning the same.

And respondent, further answering, saith that at the date of said attachment and sale, and for a long time prior thereto, the said Frosts were, and ever since have been and still are, utterly insolvent, and that there was no other property belonging to them, or either of them, of any kind or nature, out of which the said claim of Jno. I. Redick, respondent, grantor, or any part thereof, could have been made.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he stands charged by said

cross-bill, without this, that any other matter, cause, or thing in said cross-bill contained material or necessary for this respondent to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of this respondent; all which matters and
68 things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

MARTIN SPITLY.

REDICK & REDICK,
Solicitors & of Counsel for Resp'd't.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

John I. Redick, being first duly sworn, deposes and says: I am one of the solicitors and of counsel for said respondent, Martin Spitly, who is a non-resident of and now absent from said district of Nebraska. I have heard read the foregoing answer, and know the contents thereof, and the matters, things, and facts therein set forth are true of affiant's own personal knowledge, except such of said matters, facts, and things therein stated on information and belief, and as to them I believe them to be true.

JOHN I. REDICK.

Subscribed in my presence and sworn to before me this 9th day of February, 1881.

WATSON B. SMITH, *Clerk.*

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 8, G. Circuit court U. S., dist. of Neb. In chancery. The answer of Martin Spitly to the cross-bill of G. W. and Abbie Frost. Filed Feb'y 9, 1881. Watson B. Smith, clerk. Redick and Redick, sol's and of counsel for respondent.

Thereupon, afterwards, to wit, on the 14th day of February, 1881, the replication of Frost to answer of Spitly to cross-bill of Frost was filed in said case, which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

69 MARTIN SPITLY *vs.* THOMAS C. DURANT *et al.*

The replication of George W. Frost and Abby B. Frost, defendants, to answer of Martin Spitly, plaintiff, to the cross-bill of George W. Frost and Abby B. Frost, defendants.

These repliants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefits and advantage of exception which may be had or taken to the manifold insufficiencies

of the said answer, for replication thereunto say that they will aver, maintain, and prove their said cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said plaintiff is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said cross-bill of complaint they have already prayed.

WEBSTER AND GAYLORD,
Solicitors for Def'ts, George W. and Abby B. Frost.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, doc. G. U. S. circuit court, district of Nebraska. In equity. Martin Spitly *vs.* Thomas C. Durant *et al.* Replication. Filed Feb'y 14, 1881. Watson B. Smith, clerk. Webster & Gaylord, solicitors for def'ts, Geo. W. & Abby B. Frost.

70 Thereupon, afterwards, to wit, on the 3rd day of March, 1881, replication of Bryant to answer of Spitley was filed in said case, which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

THOMAS BRYANT
vs. } 8, G.
MARTIN SPITLY *et al.*

The replication of Thomas Bryant, cross-complainant, to the answer of Martin Spitly, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that *they* will aver, maintain, and prove his said cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant Spitly is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true: all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill of complaint he has already prayed.

GROFF & MONTGOMERY,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, doc. G. U. S. circuit
71 court, district of Nebraska. In equity. Thomas Bryant *vs.* Martin Spitly *et al.* Replication of Bryant to answer of Spitley. Filed March 3d, 1881. Watson B. Smith, clerk. Groff and Montgomery, solicitors for plaintiff.

Thereupon, afterwards, to wit, on the 7th day of March, 1881, the answer of respondent Frost to cross-bill of Bryant was filed in said case, which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.
In Equity.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLY, THOMAS C. DURANT, *et al.*, Respondents.

Answer of respondent, George W. Frost, to the cross-bill of complainant, Thomas Bryant.

This respondent, now and at all times hereafter, saving and reserving unto himself all benefit or advantage, by way of exception or otherwise, which can or may be had or taken to the many errors, uncertainties, and imperfection in said cross-bill contained, for answer thereunto, or to such and so much thereof as this respondent is advised is or are material or necessary for him to make answer unto, answering, saith—

That it is untrue that the said complainant is the owner in fee-simple of the lots in controversy or either of them, or entitled to the possession of the same, as in complainant's said cross-bill alleged.

This respondent admits that said lots were subject to taxation for the year 1867 and subsequent years, and that taxes were assessed against them for said years; but this respondent denies that
72 said lots or either of them for any or either of said years were legally assessed for taxation, and especially for the year 1871. Respondent denies that either of said lots was legally advertised for sale or legally sold for either of said years for non-payment of said taxes, as in said cross-bill alleged.

This respondent avers the fact to be that from the year 1868 up to and including the year 1880, and at all times between said dates, there was sufficient personal property, and more than sufficient personal property, on said lots, consisting of household goods and furniture, horses, carriages, cattle, and other personal property, to pay all taxes assessed against said lots or either of them for said years, which facts were then well known to the county treasurers of said county, but that no effort or attempt was made to make or collect said taxes out of or from such personal property. This respondent further charges and alleges the fact to be that if said lots or either of them were advertised for sale for delinquent taxes and the pretended sale of the same [was made] to said complainant that every act in that behalf by said county treas-

urer was without authority of law and void, and that said complainant acquired no title or interest or claim in or to said lots or either of them thereby.

Respondent alleges that if said complainant paid any taxes upon said lots he so paid the same voluntarily and without the authority of this respondent or any one else.

Respondent alleges that the treasurers of said county had no authority to sell said lots or either of them at public or private sale, or to issue certificates of such sale to said complainant, or to execute to said complainant a deed or deeds to said lots or either of them.

Respondent alleges that every act in and about the assessments of said lots for said years, the levy of taxes thereon for said
73 years, the advertising of said lots for sale for such taxes, the sale or sales of the same, the issuing of certificates of such sales, and the executing of a deed or deeds thereto were wholly irregular, without authority of law, and void, and that the said complainant acquired no title or interest or claim in or to said lots or either of them by reason of any such proceedings.

That the assessment of said lot four for the year 1877 and the levy of taxes thereon for said year, and the pretended sale of said lot for the taxes of said year to one Emily Satterthwait and the issuing to her of a certificate of such sale were without authority of law and void, and that said complainant acquired no title, interest, or claim in or to said lot four by virtue of the assignment to him of said last-mentioned certificate, or by the said deed or any deed based thereon.

This respondent further avers that the levy and assessment of taxes on said lots for the years 1867, 1868, 1869, 1870, and 1871, were irregular, without authority of law, and void, and that all pretended delinquent taxes alleged to have been paid by said complainant prior to the year 1872, were paid voluntarily by said complainant, if at all, and without the authority of this respondent or any one else.

Respondent avers that the taxes of 1867 and 1878 were illegal and void for the additional reason that the levies of the same were made upon said lots together and not separately, as should have been done.

This respondent avers that the taxes on said lots for the year 1876 were paid by said complainant, if at all, voluntarily and without any authority from this respondent or any one else.

This respondent further avers the levy and assessment of said taxes on said lots for the year 1877, the advertisement and
74 pretended sale of said lots for the taxes of 1877 to one J. C. Noyes, the issuing of a certificate of such sale to said Noyes, and every act in and about the said proceedings were irregular, without authority of law, and void, and that said complainant obtained no title, interest, or claim in or to said lots or either of them by virtue of the pretended assignment to him of said last-mentioned certificate or any deed or deeds based thereupon.

This respondent avers that the levy and assessment of taxes on said lots for the year 1878 and the pretended sale of the same to

one J. W. Gannett, and every act in and about such proceedings were illegal, irregular, and void, and that the pretended redemption of said lots from said sale by said complainant was voluntarily done on his part and without any authority from this respondent or any one else, and that said complainant has no title, interest, or claim in or to said lots or either of them by virtue of any certificate based upon such redemption.

This respondent denies that any legal or proper notice was given to or served upon this respondent or any one else of the expiration of the time of redemption of said lots, or that the time of redemption of said lots would expire, and respondent alleges that no legal or proper notice of such facts was ever served upon him or any one else.

Respondent alleges that each and all of the deeds, sales, certificates of sale, and each and every other act of said county treasurers and said complainant, as set forth in said cross-bill, were without authority of law, irregular, and void, and constitute a cloud upon the title to said lots; and respondent denies that he is barred by the statute of limitation from defending against the said pretended deeds or the said pretended claims of said complainant.

This respondent alleges that ever since the year 1867 he has occupied, lived upon, held, and claimed the said lots as his
75 home and homestead and now so occupies the same; that during all said time he has never been away from his said home save for brief periods occasionally on official or other business, and that he has never given up or relinquished his said homestead, but has been continuously in possession of the same ever since 1867, and that said complainant has never been in possession of said lots or either of them.

That during all of said years, from 1867 to the present time, as before alleged, there has been sufficient personal property and more on said premises belonging to this respondent to pay all taxes against said lots.

That this respondent has been the owner and now is the owner of both of said lots, and that from the year 1867 to the present time there has always been sufficient personal property and more belonging to this respondent on said premises to pay all taxes against said lots for said years.

That respondent denies all and all manner of unlawful combination and confederacy wherewith he is by said cross-bill charged, without this, that there is any other matter, cause, or thing in said cross-bill contained material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE W. FROST,
By WEBSTER AND GAYLORD,
His Solicitors and of Counsel.

Upon the back of said answer appear endorsements in
76 words and figures following, to wit: No. 8, doc. G. U. S. circuit court, district of Nebraska. In equity. Thomas Bryant *vs.* Martin Spitly *et al.* Answer of respondent Frost to cross-bill of Bryant. Filed March 7th, 1881. Watson B. Smith, clerk. Webster & Gaylord, sol's & of counsel for Frost.

Thereupon, afterwards, to wit, on the 26th day of March, 1881, the replication of Bryant to Frost's answer to cross-bill was filed in said case, which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

THOMAS BRYANT *vs.* MARTIN SPITLY *et al.* } No. 8, G.

The replication of Thomas Bryant, plaintiff, to the answer of George W. Frost, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that *they* will aver, maintain, and prove his said cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

GROFF, MONTGOMERY & BARTLETT,
77 *Solicitors for Plaintiff.*

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, doc. G. U. S. circuit court, district of Nebraska. In equity. Thomas Bryant *vs.* Martin Spitly *et al.* Replication of Bryant to Frost's answer to cross-bill. Filed Mar. 26, 1881. Watson B. Smith, clerk. Groff, Montgomery & Bartlett, solicitors for plaintiff.

Thereupon, afterwards, to wit, on the 2nd day of April, 1881, proof of publication was filed in said case, which said proof of publication is in words and figures following, to wit:

At a session of the circuit court of the United States for the district of Nebraska continued and held pursuant to adjournment, at

the United States court-room in the city of Lincoln, on the 26th day of January, 1881, the Honorable Elmer S. Dundy being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

Order on Absent Defendants.

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLY, THOMAS C. DURANT, CREDIT MOBILIER OF AMERICA, and GEORGE W. FROST, Defendants. } No. 8, G.

And now, on this 26th day of January, A. D. 1881, being at the January term, A. D. 1881, of the said court, it having been made to appear to the satisfaction of said court that this is a suit commenced to enforce a lien upon real property within the said district, and that Martin Spitly, Thomas C. Durant, and Credit Mobilier of America are defendants herein, — are not inhabitants of and
78 have not been found within the said district, and have not voluntarily appeared in this suit, on motion of Groff & Montgomery and Bartlett, solicitors for the said complainant, it is considered by the court and ordered that the said defendants above named be, and they are hereby, directed to appear and plead, answer or demur, to the complainant's bill of complaint on or before the 4th day of April, 1881, being the first Monday in April, A. D. 1881, and that in default thereof an order be entered in this cause, taking the said bill *pro confesso*.

It is further ordered by the court that at least twenty days before said April 4th a copy of this order be served upon the said defendants, wherever found, if practicable, and also upon the person or persons in possession or charge of the real property described in complainant's bill of complaint, if any there be; or, if such personal service be not practicable, that this order be published in the Omaha Weekly Republican once a week for six consecutive weeks prior to said April 4th, 1881.

(Signed) ELMER S. DUNDY, *Judge*.

THE UNITED STATES OF AMERICA, } *ss*:
District of Nebraska. }

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause therein entitled; that I have compared the same with the original entry of said order, and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Lincoln, in said district, this 26th day of January, A. D. 1881.

[SEAL.] WATSON B. SMITH, *Clerk.*

GROFF & MONTGOMERY AND
E. M. BARTLETT,
Complainant's Solicitors, Omaha, Neb.

79 STATE OF NEBRASKA, } ss:
Douglas County, }

J. W. Campbell, being duly sworn, deposes and says that he is agent — Omaha Weekly Republican, a newspaper printed at Omaha, in the said county of Douglas; that the printed notice hereto attached was published in the said weekly newspaper six consecutive weeks next after and including the 11th day of Feb'y, A. D. 1881. The said newspaper was, during that time, in general circulation in the county of Douglas and State of Nebraska.

(Signed) J. W. CAMPBELL.

Sworn to and subscribed in my presence before me this 1st day of April, 1881.

[SEAL.] E. E. BALCH,
Notary Public.

Printer's fees, $24.50.

Upon the back of said proof of publication appear endorsements in words and figures following, to wit: No. 8, G. Thomas Bryant *vs.* Martin Spitly *et al.* Proof of publication. Filed Ap'l 2, 1881. Watson B. Smith, clerk. G. & M. & B., for complainant.

Thereupon, afterwards, to wit, on the 1st day of October, 1881, motion for leave to amend answer of Geo. W. Frost was filed in said case, which said motion is in words and figures following, to wit:

Motion for Leave to Amend Answer of George W. Frost.

In the Circuit Court of the United States, District of Nebraska.

MARTIN SPITLY *vs.* THOMAS C. DURANT *et al.*

Now comes George W. Frost, one of the defendants herein, and moves the court for leave to amend his answer herein—

I. By setting out the fact that the pretended order of sale
80 in Redick *vs.* Frost, under which the lots in controversy were sold, was not an order to sell the lots in controversy, but was null and void, in that it ordered a sale of "the judgment and costs," so as to conform to the testimony taken in that respect.

II. By amending said answer in regard to the order confirming the sale in Redick *vs.* Frost, so as to set out the fact that the pretended order confirming the sale was an order confirming a sale made August 26, 1877, while the sale, made as authorized by said

order of sale, was made August 24, 1878, to conform to testimony in that regard.

GEORGE W. FROST,
By WEBSTER & GAYLORD,
His Solicitors.

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitly *vs.* Thomas C. Durant *et al.* Motion for leave to amend answer of Geo. W. Frost. Filed Oct. 1, 1881. Watson B. Smith, clerk. Webster and Gaylord, sol's.

Thereupon, afterwards, to wit, on the 1st day of October, 1881, a motion for leave to amend cross-bill of Geo. W. and Abby B. Frost was filed in said case, which said motion is in words and figures following, to wit:

Motion for Leave to Amend Cross-Bill of George W. Frost and Abby Frost.

In the Circuit Court of the United States, District of Nebraska.

MARTIN SPITLY *vs.* THOMAS C. DURANT *et al.*

Now come defendants, George W. Frost and Abby Frost, and move the court—

I. For leave to amend their cross-bill herein by setting out the fact that the pretended order of sale in Redick *vs.* Frost, under which the lots in controversy were sold, was not an order to sell
81 the lots in controversy, but was null and void, in that it ordered a sale of "the judgment and costs," so as to conform to the testimony in that regard.

II. By amending said cross-bill in regard to the order confirming the sale in Redick *vs.* Frost so as to set out the fact that the pretended order confirming the sale was an order confirming a sale made August 26, 1877, while the sale made as authorized by said order of sale was made August 24, 1878, so as to conform to testimony in that regard.

GEORGE W. FROST AND
ABBY FROST,
By WEBSTER & GAYLORD,
Their Solicitors.

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitly *vs.* Thomas C. Durant *et al.* Motion for leave to amend cross-bill of Geo. W. & Abby B. Frost. Filed Oct. 1, 1881. Watson B. Smith, clerk. Webster & Gaylord, sol's.

Thereupon, afterwards, to wit, on the 1st day of October, 1881, affidavit of Webster in support of motion to amend pleadings was filed in said case, which said affidavit is in words and figures following, to wit:

Affidavit of Webster in Support of Motion to Amend Pleadings.

In U. S. Circuit Court, District of Nebraska.

MARTIN SPITLY *vs.* THOMAS C. DURANT *et al.*

John L. Webster, being first duly sworn, deposes and says that he is one of the solicitors of defendant, George W. Frost, and of George W. Frost and Abby Frost in their cross-bill herein, and had charge of the preparation and filing of their respective pleadings herein; that affiant prepared said pleadings while he was in attend-
82 ance upon a term of this court, in Lincoln, in January, 1881, and when he was almost daily engaged before the court.

That at said time and place he did not have access to the complete record of the case, as the same was at Omaha, and that affiant prepared said pleadings from such memoranda and exhibits as he then had in his possession, and that affiant did not then have any memoranda or copies of the order of sale in Redick *vs.* Frost or the order confirming said sale. Affiant further saith that prior to the filing of said pleadings he had made an examination of the files in [the] case of Redick *vs.* Frost, but that said order of sale was not then found among the files, and the clerk of said court was unable to produce the same for the use of affiant.

That at said time of preparing and filing said pleadings affiant could not, for want of sufficient leisure from his duties before the court during said month of January, 1881, leave Lincoln to come to Omaha and make an examination of the records in the clerk's office at Omaha to see if other errors might be disclosed thereby; that affiant was so in Lincoln attending said court during all of said January, and by reason of the premises aforesaid he did not know of and had no opportunity to learn of the existence of the defects sought to be cured by the amendments now sought to be made to said pleadings.

JNO. L. WEBSTER.

Sworn to before me and subscribed in my presence this first day of October, 1881.

WATSON B. SMITH, *Clerk.*

Upon the back of said affidavit appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitly *vs.* Thomas C. Durant *et al.* Affidavit of Webster in support of motion to amend pleadings. Filed Oct. 1, 1881. Watson B. Smith, clerk. Webster & Gaylord.

83 Thereupon, afterwards, to wit, on the 26th day of October, 1881, master's report was filed in said case, which said master's report is in words and figures following, to wit:

Master's Report.

United States Circuit Court, District of Nebraska. In Equity.

MARTIN SPITLY, Complainant,
vs.
GEORGE W. FROST *et al.*, Defendants. } No. 8, G.

To the honorable George W. McCrary and Elmer S. Dundy, judges of the said court:

In pursuance of a decretal order made and entered in the above-entitled cause and bearing date on the — day of ——, A. D. 188–, at a stated term of this court, begun and held at the United States court-house, in the city of Omaha, in said district, by which said cause was referred to Dwight G. Hull, one of the masters in chancery of this court, to report to this court the law and facts as shown by the pleadings and proofs—

I, Dwight G. Hull, a master in said court, do respectfully report that I have proceeded to investigate the matters so referred to me, and that, pursuant to a notice duly issued, I have been attended by the solicitors for complainant, defendants and complainants in cross-bill of Frost & Frost, and cross-bill of Thomas Bryant, and after careful examination and consideration I do find and report—

First. On the original bill between Spitly and Frost, and find the the following facts from the pleadings and proofs:

1st. That in the year 1866 the defendant, George W. Frost, then being in the employ of the Credit Mobilier of America, entered into an agreement with Thomas C. Durant, its president, whereby lots Nos. 3 and 4, in block No. 52, in the city of Omaha, county of
84 Douglas and State of Nebraska, were purchased by said Credit Mobilier taking the title to the same in the name of its president, as trustee, and upon lot 4 there was erected a dwelling-house for the use and benefit of said Geo. W. Frost, with further agreement that at the expiration of his services, and upon final settlement, said house and lots were to become the property of the said Geo. W. Frost.

2nd. That on or about Nov. 11, 1870, the Credit Mobilier of America having failed to carry out said agreement and convey to said Frost the property aforesaid, Geo. W. Frost entered into a contract, whereby one John I. Redick, then a practicing attorney at Omaha, agreed in substance that he would, for the sum of $2,500.00, procure, through the courts or otherwise, for said Frost a title to said property.

3rd. That, in compliance with such agreement, the said John I. Redick prosecuted a suit in the district court of Douglas county, Nebraska, and obtained a decree in substance that the said George W. Frost deposit with the clerk of said court the amount deemed to be due from him on final settlement to said Credit Mobilier, to wit, $302.11, with interest from May 31st, 1869, within 30 days from or after the rising of the court, and upon his so doing said Thomas C. Durant, trustee, convey, by good and sufficient deed, said prop-

erty to said George W. Frost; or, in default thereof, a special master commissioner therein named make such conveyance.

4th. Said Frost did not pay said amount named in said decree within the time limited, but wholly neglected so to do.

5th. That on July 26th, 1877, thereafter John I Redick commenced on the law side of this court his certain action against the said George W. Frost, upon the contract for attorney's fees hereinbefore mentioned, and the defendant, George W. Frost, was personally served with summons.

6th. On July 30th, 1877, an attachment was issued in said action and bond given, and on July 31st, 1877, lots 3 & 4, in block
85 52, in the city of Omaha, were taken thereunder by the U. S. marshal as the property of George W. Frost.

7th. Frost appearing in said case by counsel, a trial was had, and on March 14th, 1878, upon the verdict of a jury, judgment was rendered in said court against Frost and in favor of Redick for the sum of $2,388.85, and a sale of the property so taken in attachment ordered.

8th. A motion and petition for a new trial having been filed by Frost, [they] were, upon the 22nd day of June, 1878, overruled and denied, and on July 1st, 1878, an order of sale was issued, and the attached property was, on Aug. 24th, 1878, duly sold by the U. S. marshal to the plaintiff in the said action, John I. Redick.

9th. That afterwards, to wit, on the 7th day of January, 1879, exceptions to said sale and a motion to set aside said sale having been filed by counsel for Frost, the questions were heard before this court, and the same were overruled, the said sale confirmed, and the marshal ordered to make a deed to said John I. Redick, the purchaser.

10th. That after the decree of the district court of Douglas county in favor of said Frost had lapsed by reason of the non-payment of the $302.11 within the thirty days after the rising of said court, Thomas C. Durant, trustee, commenced in the State court an action in ejectment against Frost and wife and one Bemis to recover possession of lots 3 and 4, block 52, Omaha, and thereupon the said Redick, on or about June 8th, 1880, applied to and was made a defendant in said action on the ground that he had succeeded to the rights of Frost in said property, and then and there paid to the clerk of said State court the sum which should have been paid by Frost on the original decree, then amounting, with interest, to the sum of $636.58.

86 11th. That thereupon the said Thomas C. Durant, trustee, accepted said amount and dismissed his said action.

12th. Subsequent to the rendition of the decree hereinbefore mentioned, and about the 11th day of November, 1876, the Credit Mobilier of America, with Thomas C. Durant, made and executed its deed to said lots to Geo. W. Frost in accordance with said decree, and sent the same to Hon. A. J. Poppleton, its attorney, but the same was never delivered to Frost nor recorded.

13th. On the 5th day of February, 1879, the marshal of this district, under his hand and seal and in obedience to the order of this court made in said case of Redick *vs.* Frost, executed and delivered

to said Redick a deed of said lots 3 and 4, block 52, Omaha, sold by him to Redick as aforesaid.

14th. On the 9th of September, 1880, the said Jno. I. Redick, together with his wife, executed and delivered to the complainant, Martin Spitly, a conveyance of said property, to wit, lots 3 and 4, block 52, Omaha, under which said Spitly now claims title.

At request of Hon. J. L. Webster, solicitor for George W. Frost, I make the following special finding of facts:

1st. That in 1866 defendant Frost went into possession of said lots 3 and 4, block 52, under an agreement with the Credit Mobilier of America, whereby he was to reside thereon, and in final settlement with them said lots were to become the property of Frost.

2nd. I find as a matter of fact that in the final settlement made by the district court of Douglas county between said Frost and the Credit Mobilier Frost was charged with the rent and use of said premises.

3rd. That both prior and subsequent to the decree of said district court Frost and his family occupied said premises and lived thereon until about July, 1877, when Frost, with his wife and family, went to Montana, he going as U. S. Indian agent to the Crow Indian agency.

87 4th. That Frost and family were absent from Omaha about 18 months on such official service, but left the greater part of their household goods on said premises, and returned there to live in January, 1879, and have so occupied said premises up to the bringing of this suit.

5th. That the order of sale issued to the marshal in the case in this court of Redick *vs.* Frost is lost, and the copy in the complete record, which is introduced in evidence, reads as follows: * * * The marshal to sell "the judgment and costs."

6th. That the order of confirmation of January 7th, 1879, of said sale recites the date of said sale as being Aug. 24th, 1877, when, in truth and fact, no such sale was made, and the return of the marshal shows said sale to have been made Aug. 24th, 1878.

On application of Hon. J. L. Webster for leave to amend answer of George W. Frost I find that such amendment should not be allowed, as the facts therein set forth are merely clerical errors and do not affect the merits of the controversy. I do, therefore, find and report on the pleadings and proofs in the bill of Martin Spitly *vs.* George W. Frost *et al.*—

1st. That by the sale of Aug. 24th, 1878, and subsequent confirmation, and the payment by Jno. I. Redick of the amount due from Frost to the Credit Mobilier of America on the decree hereinbefore set forth, the said Jno. I. Redick acquired all the rights and interests of Geo. W. Frost to lots 3 and 4, block 52, in the city of Omaha.

2nd. That the confirmation of the sale in the case of Redick *vs.* Frost cured all defects in proceedings therein, and finally adjudicated the question of the homestead of said Frost and all other questions which were or might have been raised therein.

On the cross-bill of George W. Frost and Abby B. Frost *vs.* Martin Spitly I find as follows:

88 1st. That George W. Frost and Abby B. Frost are husband and wife, and have resided in Omaha for the past 15 years, and at no time since have lost their residence in Omaha by reason of absence therefrom.

2nd. That for about 18 months, commencing in July or Aug., 1877, they temporarily resided at Crow agency, Montana, where Frost was acting officially as Indian agent.

3d. That during their absence the house on lots 3 and 4, block 52, was occupied by a friend, without rent, the household goods of Frost remaining therein.

4th. That said Frosts then claimed said premises as their homestead.

5th. That the judgment of Redick against George W. Frost was based upon a written contract signed by Frost alone, and was not signed nor executed by Abby B. Frost, his wife.

6th. There was no stipulation that said contract should bind the homestead of Frost.

7th. That as to George W. Frost his claim of homestead in said premises was fully adjudicated in the said case of Redick *vs.* Frost in this court.

8th. I find that at the time of sale of said premises on Redick's said judgment notice was given by Hon. J. L. Webster, solicitor of Frost, to the marshal that Frost claimed said property as his homestead.

9th. I find that the question of appraisement of said property was presented to this court on confirmation and was passed on by his honor Judge Dundy.

10th. That the payment of the amount found due by the district court of Douglas county from Frost to the Credit Mobilier
89 was made by Redick, he having by reason of his purchase at marshal's sale succeeded to the rights of the said George W. Frost in said lots.

11th. That John I. Redick, by his deed of conveyance, dated September 9th, 1880, duly conveyed the premises in question to Martin Spitly for a valuable consideration.

On request of solicitor for Geo. W. Frost and Abby B. Frost I find specially as follows: First, that the original order of sale in Redick *vs.* Frost is lost, and the complete record thereof offered in proofs reads: * * * "The marshal to sell * * * the judgment and costs." Second, that the order of confirmation in said case names the date of sale confirmed as Aug. 24th, 1877, while the return of the marshal and other records in case showed that the sale was actually made Aug. 24th, 1878.

12th. I find as a conclusion of law that the sale of said lots and confirmation thereof in the case of Redick *vs.* Frost, being prior to June 1st, 1879, when the new homestead law took effect, the said Abby B. Frost did not acquire any interest or estate in said lots of homestead or otherwise.

I do therefore find and report that the cross-bill of Geo. W. Frost

and Abby B. Frost against Martin Spitly *et al.* should be dismissed at the costs of said Frost.

On the cross-bill of Thomas Bryant against Martin Spitly, Credit Mobilier of America, George W. Frost, and Thomas C. Durant, I find as follows:

1st. That since the year 1867 lots 3 and 4, in block 52, in the city of Omaha, Douglas county, Nebraska, have been subject and liable to taxation.

2nd. That neither of said defendants in cross-bill nor any person for them have paid the taxes levied or assessed thereon.

90 3d. That complainant in cross-bill, Thomas Bryant, has at divers times purchased at tax sale said lots and paid large sums of money, which have been applied in satisfaction of such taxes, said Bryant receiving certificates of sale therefor, upon presentation of which tax deeds have been issued to said Bryant and placed upon the records of Douglas county.

4th. I find that all of such tax deeds are void and convey no title to the said property.

5th. I am unable from the proofs to determine what legal taxes are included in the several amounts paid by Bryant on such certificates.

6th. I do therefore find and report that an account should be taken of all sums of money paid by said Thomas C. Bryant or his assignors as legal taxes upon said lots 3 and 4, block 52, Omaha, separately, and that said Thomas C. Byrant be subrogated to the rights of the county of Douglas and city of Omaha therein; and all sums legally paid, with interest from the time of payment, be adjudged and decreed, to be liens upon said lots, respectively, and if said sums and interest as aforesaid be not paid within a time to be fixed by the court, the said lots be separately sold for the tax due thereon, according to the practice of this court, and the monies arising from such sale be applied in payment thereof.

Upon the whole cas , I do therefore find and report that a decree should be entered dismissing the cross-bill of George W. Frost and Abbie B. Frost, and that the title to said lots 3 and 4, block 52, be quieted in the complainant, Martin Spitly, as against them. It should also be decreed that the amount found due upon an accounting for taxes paid by Thomas C. Bryant, with interest thereon, be a lien on said lots, respectively, and if not paid within a time limited the said lots be separately sold according to the practice of this court, and the monies arising therefrom be applied in pay-

91 ment of the same and costs of this suit.

All of which is respectfully submitted.

DWIGHT G. HULL,
Master in Chancery.

Lincoln, Neb., Oct. 26th, 1881.

Upon the back of said master's report appear endorsements in words and figures following, to wit: No. 8, G. Martin Spitly *vs.* George W. Frost *et al.* Master's report. Filed Oct. 26, 1881. Watson B. Smith, clerk, by Elmer D. Frank, deputy.

Thereupon, afterwards, to wit, on the 26th day of October, 1881, testimony was filed in said case, which said testimony is in the words and figures following, to wit:

92 *Testimony Taken before Dwight G. Hull, Master in Chancery of said Court, Saturday, the second day of April, A. D.* 1881.

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

MARTIN SPITLEY, Complainant,
vs.
GEORGE W. FROST and THOMAS C. DURANT, Defendants.
} No. 8, Docket G.

Present: Hon. John I. Redick, counsel for complainant; Hon. John L. Webster, counsel for defendant Frost.

JOHN I. REDICK, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Redick, and deposes and says as follows:

I desire to state that Mr. Frost, after this decree was obtained in the State district court, stated to me at my office, expressing his delight at our success, that he knew Dillon would not take an appeal, because Dillon had frequently told him that all he wanted was a court of record to say that he was entitled to the property, and that the Credit Mobilier did not want it; that he stated it to me more than a dozen times in the course of my employment.

Int. 1. State whether Mr. Frost ever notified Mr. Redick of what he had done in New York.

To which respondent objects for the reason that it does not tend to contradict the witness Frost, because he did not state that he did; second, because he was under no obligation to notify Mr.
93 Redick of such conversation. Overruled. Exceptions taken.

Ans. He never did; and Mr. Redick, after a great deal of difficulty, ascertained that Mr. Poppleton held that deed in trust for him, and he asked Frost if that was not the fact, and he denied it, and said that he never knew that there was a deed made to anybody, nor that he lost his property.

Cross-examination by Mr. WEBSTER:

Int. 2. When did you say that Frost said that he never knew that there was a deed made to him in the hands of anybody?

Ans. Soon after he went down to New York.

Int. 3. How soon after his return from New York?

Ans. I don't know; I could not give the exact date.

Int. 4. You talked to him immediately after the first time you heard he had gone down there?

Ans. I don't know whether it was the first time I saw him after I heard he had been down to New York or not.

Int. 5. It may have been?

Ans. Yes, sir; I don't remember.

Int. 6. At that time you say Frost said he knew nothing about a deed being made out for him?

Ans. He said he knew nothing about the deed. I said I heard he had made that arrangement.

Int. 7. Don't you know that Frost did not know that there was a deed came until long after your conversation with him?

Ans. I don't know anything about that.

Int. 8. Don't you know it may have been before this deed was made and put in the hands of Poppleton?

Ans. I don't know.

94 A. J. POPPLETON, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Redick and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. A. J. Poppleton; age, 50 years; Omaha; attorney.

Q. 2. Do you remember about the time a decree was rendered in the district court by Judge Savage involving the title to the lots of George W. Frost; if so, what year was it?

Ans. I have a copy of the decree in my pocket; March, 1876, according to this.

Q. 3. State whether or not, after the date of that decree, you received a deed for said property from Thomas C. Durant, trustee, or any one claiming interest in the property; and, if you answer that you did, tell about when you received it and how you came to get it.

Objected to as wholly immaterial, for the reason that in the issues the question is simply as to the effect or validity of the title which Redick acquired at the judicial sale made, and anything which may have occurred prior to that, so long as the deed has not been made to any other person, is immaterial. Overruled. Exceptions taken.

Ans. I never received or had in my possession a deed for the premises in question from Thomas C. Durant after the decree was made. I did receive and had in my possession a deed purporting to be from the Credit Mobilier of America for the premises in question, but I can't fix the exact date, but it was some time within six months after the decree was made.

Q. 4. Who sent it to you?

Objected to same as last objection. Overruled. Exceptions.

Ans. I cannot recollect with certainty from whom I received it.

95 Q. 5. What is your best recollection—your best impression?

Ans. I can't tell truly from whom I received it, but I think it was sent at the instance of Sidney Dillon, but whether he sent it or not I am not certain.

Q. 6. Have you the letter that came with the deed?

Objected to same as last objection. Overruled. Same exceptions.

Ans. That question I cannot answer. My impression is that no letter came, but that it was simply sent in an envelope.

Q. 7. Who did it convey the property to?

Objected to as being improper evidence. Objection sustained.

Q. 8. What became of that deed?

Ans. I can't tell.

Q. 9. Have you got it yet?

Ans. I don't think that I have; I could not swear positively when without sifting my office.

Q. 9. Will you look for that deed and letter, Mr. Poppleton, and if you find them, permit the master to take a copy of them, if such a deed and letter you have?

Ans. I will say this, that I cannot undertake to go through my office myself, but I will set my clerks at going through my office, and if they find it, all right; I cannot spend my time in going through my office myself. I can find if there is such a letter, but the deed I cannot swear absolutely — until I go through my office.

Q. 10. State whether or not you had received any communication from either Sidney Dillon or Thomas C. Durant before you got that deed touching it.

Ans. I don't think I did.

Q. 11. Did you have any conversation before the deed was sent—before the deed had come—with Mr. Frost regarding it?

A. My recollection is that I never had.

96 Q. 12. Who was Sidney Dillon at that time—what as to his position with reference to this Credit Mobilier?

Objected to as immaterial who he was. Overruled. No exceptions taken.

Ans. At that time I think Sidney Dillon had no relation to the Credit Mobilier.

Q. 13. Before that, what was his relation to it?

Ans. He had been at one time its president and a stockholder. At the time of my conversation with him I don't think he had any official or other relation to it.

Q. 14. State whether or not he had control of the Credit Mobilier officers at that time.

Ans. No; not control of them. He had a good deal to say about things. He knew a good deal about that and they took his advice. The men that had the control listened to him.

Q. 15. Under what arrangement did you get that deed?

Objected to as incompetent and immaterial. Overruled.

Ans. The decree which recognized Frost's interest in the property in the original suit provided that he should pay a certain sum within thirty days in order to take the interest; he failed to pay that money within thirty days; he failed also to take an appeal within the time allowed by law. Sidney Dillon was willing that Frost should have the property notwithstanding he had made default in respect to the decree if he should pay the money right off. When the matter was brought to his attention this deed was made and delivered to me with directions to deliver it to Frost if he paid that money within a

given length of time, which was within ten, twenty, or thirty days, and if he failed to do it to cut loose from him and have nothing to do with him after that.

Q. 16. That was about thirty days after you received the deed?

Ans. I don't recollect the time; it was a short time.

97 Q. 17. Did you present the deed to Frost and ask him to pay the money?

Ans. I notified him in regard to it.

Q. 18. Did he ever come to you?

Ans. I think he or Mr. Webster did; I am not sure that Frost was here. I know that there were a good many promises to pay it off, but they never were fulfilled.

Q. 19. What has become of the deed; did you send the deed back?

Ans. I don't know whether I did or not.

Q. 20. Was the money ever paid on that decree by any one?

Ans. The amount called for by the decree, with interest, was afterpaid into court and the Credit Mobilier received it.

Q. 21. Who paid it?

Ans. John I. Redick. I don't know whether I saw that money paid or not; I think it was paid by Redick's check; the receipt I gave for it went to the clerk.

Q. 22. Before the deed was sent to you for Frost, had you heard from Durant that Frost had been down to New York to see him?

Ans. I did not.

Q. 23. Did you learn that he was down to New York to see Durant?

Ans. I may have, but I don't recollect. Whatever took place took place here, and generally at my own suggestion.

Cross-examination by Mr. WEBSTER:

Q. 24. Mr. Poppleton, this understanding mentioned, had between you and Durant, was it not brought about by an interview that was opened and suggested by yourself; this interview, was it not brought about by your own suggestion?

Objected to. No ruling.

Q. 25. At that time you had been acting as attorney for the Credit Mobilier?

Ans. Yes, sir.

98 Q. 26. Mr. Durant knew the fact of your professional relation in that case?

Ans. Yes, sir; in that case; I had no general connection with it.

Q. 27. Is it not true that this deed was made by reason of suggestions made by you as such attorney?

Ans. My recollection is that the making of the deed was brought up chiefly in this way: That the property had become so much encumbered and so much depreciated in value that it was thought hardly worth while for the interest of the Credit Mobilier or the railroad company to pursue it any farther; and, all things considered, that it was better to take the money and let it go, and the deed was

made out for the purpose of allowing Frost to take it within a reasonable time and give him chances to do it with, and if he did not do it we would not have anything more to do with him; it granted him the privilege of still paying the money, notwithstanding his agreement had lapsed.

Q. 28. It was an agreement on your part to extend the time?

Ans. We could not by the decree of the court extend the time, nor did we undertake to extend the time; we thought it best to leave him take the property if he had paid the money.

Q. 29. Let me ask you if you then knew or was a party to any scheme between Mr. Frost and the Credit Mobilier of America or Thomas C. Durant or any other party by which this deed was executed and put into your charge for the purpose of enabling Mr. Frost to defraud Mr. Redick out of any claim which he might have had for attorney's fees in this case?

Objected to by complainant for the following reasons: First, that it is not proper cross-examination; second, it is leading; third, it seeks to clear the witness of a charge of which he never — under any papers nor by the examination-in-chief, and — immaterial. Overruled. Exceptions taken.

99 Ans. I have no knowledge of any such arrangement or conspiracy, and never heard that there was any such; I don't think I ever heard Mr. Redick's name mentioned during the time that the business was transacted or his claim for attorney's fees referred to in any way.

Q. 30. If such deed referred to by you had come into your possession for any such purpose or by reason of any such scheme, would you not likely have known that fact?

Objected to as seeking to stultify the witness and make him capable of becoming a party to a fraud when he is not being charged, and is not proper cross-examination. Overruled. No exceptions.

Ans. I might have known it and I might have not; I do not think I might necessarily have known it, unless the parties in such conspiracy would have chosen to communicate it to me; I never knew as to the fact of it.

Redirect examination by Mr. REDICK:

Q. 31. If Frost had proposed, or if Frost, Dillon, and Durant had conspired to cheat me out of my fee and suggested the scheme to you, would you have joined them in the swindle?

Objected to. Objection sustained.

Q. 32. Who was the grantee in the deed?

Ans. Frost.

Q. 33. What Frost?

Ans. George W. Frost.

Q. 34. Alone?

Ans. That is my recollection; that is my best recollection.

100 EXHIBIT "A."

OFFICE OF HAM BROTHERS, 23 NASSAU STREET,
NEW YORK, *No'b'r 16th*, 1876.

P. O. box 2290.

Hon. A. J. Poppleton, att'y U. P. R. R. Co., Omaha, Neb.

DEAR SIR: By advice of Peter Butler, Esq., pres't C. M. of A., I enclose herewith deed in favor of Geo. W. Frost, Esq.

Very truly, BENJAMIN F. HAM,
Act'g Sec'y C. M. of A.

EXHIBIT "B."

Quit-Claim.

This indenture, made the eleventh day of November, in the year of our Lord one thousand eight hundred and seventy-six, between The Credit Mobilier of America, a corporation organized under the laws of the State of Pennsylvania, and Thomas C. Durant, trustee, and H. H. Durant, his wife, parties of the first part, and George W. Frost, of Omaha, in the State of Nebraska, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said party of the second part at or before *and* ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim, unto the said party of the second part, and to his heirs and assigns, forever all [of] lots number three (3) and four (4), in block number fifty-two (52), in the city of
101 Omaha, in the State of Nebraska, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. This conveyance is made and executed in accordance with the decree of the district court of the State of Nebraska, 2nd judicial district, in case of George W. Frost *vs.* Union Pacific Railroad Company, Credit Mobilier of America, and Thomas C. Durant, trustee.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written, and the said Credit Mobilier of America hath caused these presents to be

signed by its president and its corporate seal to be affixed the day and year first above written.

THE CREDIT MOBILIER OF AMERICA,
By PETER BUTLER, *Pres't.* [SEAL.]
THOMAS C. DURANT, *Trustee.* [SEAL.]
HELOISE H. DURANT. [SEAL.]

Sealed and delivered in presence of—
D. MAXTER,
D. BUCKLEY,
Witnesses to Peter Butler.

Witnesses:
O. WEAVER,
MARGARET MOLNIEUX,
As to signature of Thos. C. & Heloise H. Durant.

STATE OF MASSACHUSETTS, } ss:
County of Suffolk, }

Be it remembered that on this 15th day of November, A. D. 1876, before me, James G. Harris, a notary public, personally appeared Peter Butler, the president of the within-named corporation, The Credit Mobilier of America, to me personally known to be the identical person described in and whose name is affixed to the
102 within instrument as the president of said corporation, grantors, and he acknowledged the same to be his voluntary act and deed as the president of said company, and the voluntary act and deed of said company, and he, being by me duly sworn, did depose and say that he is the president of said Credit Mobilier of America, and that the seal affixed to the within instrument is the corporate seal of said corporation, and that it was so affixed to said instrument by order of the board of directors of said corporation, and that he signed his name thereto by the like order as president thereof.

In witness whereof I have hereunto set my hand and affixed my official seal.

[SEAL.] JAMES G. HARRIS,
Notary Public.

STATE OF NEW YORK, } ss:
County of Warren, }

Be it remembered that on this 11th day of Nov., A. D. 1876, before me personally appeared Thomas C. Durant, trustee, and Heloise H. Durant, his wife, to me personally known to be the identical persons described in and whose names are affixed to the foregoing and within instrument as grantors, and they severally acknowledged the same to be their voluntary act and deed; and the said Thomas C. Durant also acknowledged the same to be his voluntary act and deed as trustee, as therein described.

In witness whereof I have hereunto set my hand and affixed my official seal.

WM. H. WALDRON,
Justice of the Peace.

STATE OF NEW YORK, } ss:
Clerk's Office, Warren County, }

I, Albert F. Ransom, clerk of said county, and also clerk of the county and supreme courts of said county, do hereby certify that William H. Waldron, whose name is subscribed to this certificate of proof or acknowledgment of the annexed instrument in writing and endorsed thereon, was at the time of taking such proof or acknowledgment a justice of the peace in and for the county aforesaid and dwelling in said county, and duly authorized to take the same; that I am acquainted with the handwriting of the said
103 William H. Waldron, and verily believe that the signature of the said certificate of proof or acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of New York.

In testimony whereof I have hereunto set my hand and affixed my official seal this 13th day of November, 1876.

[SEAL.] ALBERT F. RANSOM, *Clerk.*

WATSON B. SMITH, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. REDICK, and deposes and says as follows:

Int. 1. Will you look at that paper and tell what it is, please?

(Witness examines paper.)

Ans. This is a deposition that was taken by me under an order of reference in the case of Redick *vs.* Frost, in the United States circuit court for the district of Nebraska, referred to me as clerk.

Int. 2. Who appeared in that case?

Ans. John I. Redick and J. L. Webster; Redick for the plaintiff and Webster for defendant.

Int. 3. State whether or not you sealed up this deposition, directed it, and filed it with the papers in the case.

Ans. I did; yes, sir.

Int. 4. Do you know who opened them?

Ans. I do not; the wrapper is not here; the wrapper is probably endorsed. I have no doubt but that my docket shows that this was filed on a certain day. I have not looked, but I am satisfied that this is the case. My usual practice is to endorse on the wrapper the date of filing.

104 Cross-examination by Mr. WEBSTER:

Int. 5. That was a matter that was referred to you to take proofs on some question for that suit?

Ans. Yes, sir.

Int. 6. Are you prepared to swear that in such case you would not hand back such proof without enclosing it in an envelope?

Ans. I am quite confident that I enclosed that deposition in a wrapper. My appearance docket will show that date of its filing.

Int. 7. Are you prepared to swear that you enclosed it in a wrapper?

Ans. No, sir; I won't do that.

Int. 8. After you took this testimony have you any personal knowledge as to what became of that paper?

Ans. I don't know that I recollect the disposition of it, but, then, my recollection is that I endorsed it, enclosed it in a wrapper, and placed it on file, and it remained there some time, and until it went into the hands of the judge. Papers often do that, and then he opens them.

Int. 9. Without your docket you would not be prepared to swear what became of it?

Ans. No; but my recollection is that I did. I have a distinct recollection that I did. I would know positively if I looked at my docket.

Int. 10. So, then, you would not be positive?

Ans. No; but I am quite confident.

Redirect examination by Mr. REDICK:

Int. 11. Will you be kind enough to look at your docket?

(Docket brought into court and examined by witness.)

Ans. Filed depositions September 27th, 1878.

Mr. Webster objects to this testimony on behalf of the defendant for the following reasons: First, the record only shows that
105 on September 27th, 1878, deposition was filed, and it does not show or make any reference to this as being the deposition that was filed on that day; second, this appears to be filed for the purpose of determining the question of residence of Mr. Frost, and my objection to this is that in this case the question of residence must be proved by the testimony, and cannot be proved by the record on file in another case, there being nothing as being stated by Mr. Frost, but — the testimony of other parties.

Int. 12. Please state whether there was any other depositions filed in this suit.

Ans. That is all.

Ordered that it may be admitted for the purpose of showing the proceedings in that suit.

Said depositions taken before Watson B. Smith, clerk, are in words and figures following, to wit:

EXHIBIT "A."

DISTRICT OF NEBRASKA, *ss:*

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK. }
vs. } No. 87, D.
GEORGE W. FROST. }

Be it remembered that on this 23rd day of September, 1878, I, Watson B. Smith, clerk of said court, in pursuance of an order of

said court, a copy of which order is hereto attached, did cause to be and personally appear before me, at my office in the U. S. court-house building, at Omaha, Nebraska, John L. Webster, George P. Bemis, and Mrs. Julia B. Bemis to testify and the truth to say in the matter in controversy in the above-entitled cause now pending in said circuit court.

Present: John I. Redick; J. L. Webster, att'y for def't.

Witness my hand this 23rd day of September, A. D. 1878.

WATSON B. SMITH, *Clerk.*

106 EXHIBIT "B."

JOHN L. WEBSTER, a witness on behalf of defendant, being first duly sworn, testified as follows:

My age is thirty-one years; I reside at Omaha, Nebraska; my business is attorney-at-law. I am acquainted, and have been for eight years past, with George W. Frost and family. During that time he occupied with his family the lots in controversy with the dwelling thereon as a home. His family consists of himself and wife and a daughter of his wife, who lives with the family, whom he supports; that just prior to the commencement of this suit he was appointed as an Indian agent for the Crow Indians, and left Omaha with his family for Crow agency, Montana Territory, about the first of July, 1877; that just previous to his departure I had a conversation with Frost——

(Here the plaintiff objects to the witness stating anything what Frost told him, or any conversation with him, as being hearsay and not the best testimony.)

In which he said to me that he intended leaving his furniture in the house during his absence so that it would be in good order for him when he returned at the termination of his agency; that he would not rent the house and furniture to general tenants, but would either close up the house until his return or let some friend of the family occupy it at a nominal rent, who would look after the property and furniture and keep the same in good condition for his occupancy when he came back. At other times he gave me to understand about the same facts in a general way.

Cross-examination by Mr. REDICK:

1st. Int. Do you swear positively that he used the language "keep the same in good condition for his occupancy when he came back."

Ans. These are the words, about as near as I can recollect them after this lapse of time, but may not be literally correct.

JOHN L. WEBSTER.

Subscribed in my presence and sworn to before me this 23rd day of September, 1878.

WATSON B. SMITH, *Clerk.*

107 EXHIBIT "C."

GEORGE P. BEMIS, a witness produced on behalf of the defendant, being first duly sworn, deposes as follows:

I am a nephew of Mrs. Frost. Mr. Frost, at the time he left for the Crow agency (here plaintiff objects to any conversation with Frost, the same being hearsay), *he* put me and my family in possession of his house and two lots in this city mentioned in this suit, and stated to me several times before leaving that he had accepted this appointment only temporarily, expecting some better position, either here or elsewhere, and also stated that they would leave the house in the same condition as while they were living there, with carpets down, and with all the furniture, clothing, etc.; that he expected to be back in the fall or spring; that his family did not intend at first going with him, thinking that he would probably be there but a short time, but Mrs. Frost and her daughter determined to accompany him, on account of their health. Mrs. Frost did leave the house and contents as stated heretofore. I was to take good care of the property and hold it until he returned. He stated that he intended to hold said lots as his homestead. I pay no rent; I simply keep the house for him. I have seen letters from his family stating that they would be back here in thirty days.

GEORGE P. BEMIS.

Subscribed in my presence and sworn to before me this 23rd day of Sept., 1878.

WATSON B. SMITH, *Clerk.*

Attorney for plaintiff here offers in evidence the following papers filed in this case, to wit: The answer of George W. Frost, affidavit for attachment, affidavit for continuance filed Nov. 15, '77, and affidavit for continuance filed Feb. 21, 1878.

EXHIBIT "D."

JULIA B. BEMIS, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

I am the wife of George P. Bemis, and am now living on the property in controversy. Mr. Frost, when he left to accept his appointment as Indian agent, left in his house here all his property, furniture, and carpets just the same as when they were using it; also
the greater portion of their best wearing apparel, bedding,
108 trunks, and everything of that kind. — a trunk apiece, with such clothing as they might need for six months or a year.

They left their things here because they did not expect to stay away permanently, and did expect to return last fall. We pay no rent, but are simply occupying the house as friends of the family, to take care of the property until Mr. Frost and family return. I received a letter from Miss Shaw, a member of the family, dated the 8th day of this month, in which she stated that they expected to return to Omaha within a month.

JULIA B. BEMIS.

Subscribed in my presence and sworn to before me this 23rd day of Sept., 1878.

WATSON B. SMITH, *Clerk.*

Upon the back of said depositions appear endorsements in words and figures as follows to wit: No. 87, D. Circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Depositions taken before Watson B. Smith, clerk.

Mr. Redick, on behalf of complainant Spitly, offered in evidence copy of the appraisement made by the United States marshal in the case of Redick *vs.* Frost, in the United States circuit court, No. 87, D.

Objected to by Mr. Webster, there being nothing to show that there was an order of sale issued.

WATSON B. SMITH, a witness on behalf of complainant, being recalled, testified as follows:

By Mr. REDICK:

Int. 13. Was there ever an order of sale issued?

Ans. Yes, sir; an order of sale was issued July 1st, 1878.

Mr. Redick, on behalf of complainant, offered in evidence the order of sale, as appears by the complete record made in the case, the original order not being found; to which Mr. Webster, on behalf of the defendant, objects for the reason that it does not state what was to be sold, reading: "You are therefore commanded to proceed as upon execution, advertise, and sell so much of the judgment, interest, and costs."

109 Mr. Redick withdrew the offer.

Mr. Redick then offered in evidence the petition for new trial in the case of Redick *vs.* Frost, in the United States circuit court, as appears by the complete record of the case, page 377, Book P. Admitted for the purpose of showing the proceedings in that suit.

Mr. Redick, on behalf of complainant, offers in evidence the entire complete record in the case of Redick *vs.* Frost, in the U. S. circuit court, No. 87, D., commencing on page 352, and running to page 387, inclusive, in Book P, withdrawing the offer of the petition for new trial, on page 377, it being included in last offer. Admitted without objections.

1. 87, D.

Be it remembered that on the 26th day of July, 1877, a petition was filed in the office of the clerk of said circuit court, which said petition is in words and figures following, to wit:

EXHIBIT "E."

Petition.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST, Defendant.

The said John I. Redick, plaintiff, of Denver, Colorado, and a citizen of the State of Colorado, complains of the said George W. Frost, defendant, of Omaha, Nebraska, and a citizen of the State of Nebraska, and for cause of action against said defendant alleges—

That at all the times and dates hereinafter mentioned plaintiff was an attorney and counsellor at law, and as such engaged in active practice in the city of Omaha, Nebraska; that on or about the 11th day of November, A. D. 1870, and for some time prior thereto, the said defendant consulted said plaintiff with reference to his equitable interest and legal rights in the premises hereinafter described, and with a view and for the purpose of recovering, if possible, the title to said premises from one Thomas C. Durant, trustee, in whom said premises —, for himself, the Credit Mobilier of America, and the Union Pacific Railroad Company, and therefore, on said last-mentioned day, for the purpose of bringing an equitable action in the proper court to recover said title by proper decree, declaring that said Thomas C. Durant, trustee aforesaid, held said premises in trust for said George W. Frost, and in order more effectively to perfect an arrangement for that purpose, the said Frost, on or about the date last aforesaid, entered into a contract with said plaintiff, which contract was in writing and was duly signed and executed by said plaintiff and said George W. Frost, and by the terms of said contract it was provided and agreed that, in consideration of the sum of $2,500, said plaintiff, as said attorney for said Frost, was to bring said suit and procure through the courts a good title to the premises then occupied by said Frost as his residence, in the city of Omaha, Douglas county, Nebraska, the same being known and described as lots three (3) and four (4), in block fifty-two (52), and in case of any settlement or arrangement of said suit, then said Frost was to pay in proportion only, and in case said Frost failed to procure said title at all, then said plaintiff, as such attorney, was to have and receive for his service a mere nominal fee, to wit, the sum of $100, a copy of which said contract is hereto attached and made a part of this petition.

And the said plaintiff further alleges that upon the making and execution of said contract as aforesaid, and in pursuance thereof, the said plaintiff, as attorney for said Frost, commenced a suit in equity in the district court in and for Douglas county, Nebraska, for and in behalf of said Frost against Thomas C. Durant, trustee, who held said property as aforesaid, and in whose name, as trustee, said property appeared of record, and also against the Credit Mobilier of America aforesaid, which claimed an interest in said property by reason of the same being held by said Durant, as trustee, he, the said Durant, being president of said Credit Mobilier of America, and also

against The Union Pacific Railroad Company, a corporation, of which said Durant was vice-president.

111 And said plaintiff further alleges that said suit in equity was by him commenced, as aforesaid, for the purpose of securing to said Frost the title to said premises held by said Durant, trustee as aforesaid, as by the terms of his said contract he had agreed to do, and after a long and difficult and vexatious litigation, which was closely contested by able counsel, found on behalf of said Durant, the Credit Mobilier of America, and the Union Pacific Railroad Company, said plaintiff, as attorney for said Frost, secured for said Frost a final decree of the court in said suit, whereby it was ordered and adjudged by said court that upon said Frost depositing with the clerk of said court for the use of the defendants in said suit, within thirty days after the close of the term of said court, to wit, the February, A. D. 1876 term thereof, the sum of $302.71, with interest on that sum from the 31st day of May, 1869, that the said Thomas C. Durant convey to said Frost, or cause to be conveyed to him, [by] a good and sufficient deed, with the usual covenants of warranty, the property in controversy, to wit, said lots 3 and 4, in block 52, and that in default thereof Alfred Burley, appointed a special master for that purpose, should execute and deliver to said Frost such deed. And it was by said court further ordered and adjudged in said decree that said Thomas C. Durant, trustee, the Credit Mobilier of America aforesaid, and said Union Pacific Railroad Company, be forever barred of all right, title, interest, or equity in or to said premises or any part thereof.

And the said plaintiff further alleges that upon the rendition of the decree aforesaid, and within thirty days of the close of the term of court, the said plaintiff frequently offered to furnish said Frost with said sum of $302.71, and interest, as required by said decree, for the purpose of depositing the same with the clerk of said court for the use of the defendants in said suit, but said Frost declined and refused to receive said money and deposit the same with said clerk; and said plaintiff further alleges that ever since the rendition of said decree he, the said plaintiff, has been and still is ready and

112 willing to furnish said money and interest to said Frost for the purpose of enabling him fully to comply with the terms of said decree; but the said Frost, for the purpose of wronging said plaintiff and preventing him from fully carrying out the requirements of said decree, has declined and refused to pay the clerk of said court said sum, with interest, to accept the same from said plaintiff for such purpose, but by means of said decree having been procured by plaintiff as aforesaid, the said Frost has made some arrangement, the precise nature of which said plaintiff is unable to state, with said Durant and the Credit Mobilier of America, by which said Durant was to deed said premises to said Frost or to his wife or to some member of his family for him; and said plaintiff is informed and believes and therefore alleges that such deed has been fully executed and is now in possession of said Frost, and that said Frost now has in himself, or some member of his family for him, a good title to said premises, which said title said plaintiff procured

and said Frost now holds by reason of the learning, diligence, and skill of said attorney in said suit, and by reason of said decree obtained as aforesaid, and but for said decree said Durant would not have conveyed said premises, and said Frost is thereby now in the quiet, peaceable, and undisputed possession and occupancy of said premises, which are of great value, to wit, upwards of $12,000.

And the said plaintiff further alleges that the said — by him performed in said suit, as aforesaid, were reasonably and fairly worth the said sum, $2,500; that said Frost, though often requested, hath refused to pay said claim or any part thereof, and that no part thereof has been paid, but the whole of said sum of $2,500 still remains due and payable to said plaintiff from said Frost, and for which amount, with interest from the 1st day of March, A. D. 1876, the said plaintiff prays judgment.

W. J. CONNELL,
Plaintiff's Attorney.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

W. J. Connell, being first duly sworn, says he is attorney herein for said John I. Redick, the plaintiff named in the foregoing
113 petition, who is now absent from said State and district of Nebraska and in Denver, Colorado, and for which reason affiant makes this affidavit. Affiant further says that he has read said petition, and knows the contents thereof, and believes the facts stated therein to be true.

W. J. CONNELL.

Subscribed in my presence and sworn to before me this 26th day of June, 1877.

WATSON B. SMITH, *Clerk.*

EXHIBIT "F."

Copy of Contract.

In consideration of two thousand five hundred dollars as attorney's fee, I agree with Hon. Geo. W. Frost that I will bring suit and procure, through the court or otherwise, to him a good title to the premises he, the said Frost, now occupies as his residence in the city of Omaha, and in case any settlement or arrangement of the suit then said Frost is to pay in proportion only, and in case said Frost fails to procure said title at all, then the said attorney is to have a mere nominal fee for his services, to wit, $100.

Nov. 11, 1870.

(Signed) JOHN I. REDICK.
GEO. W. FROST.

Said petition is endorsed as follows: U. S. circuit court, district of Nebraska. No. 87, D. John I. Redick *vs.* George W. Frost. Petition. Filed June 23, 1877. Watson B. Smith, clerk. W. J. Connell, plaintiff's attorney.

Thereupon, afterwards, to wit, on the 27th day of June, 1877, a summons was filed in said case, which said summons is in words and figures following, to wit:

EXHIBIT "G."

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

The President of the United States of America to the marshal of the district of Nebraska, Greeting:

You are hereby commanded to notify the defendant, George W. Frost, that he has been sued by John I. Redick in the circuit court of the United States for the district of Nebraska aforesaid, at
114 Omaha; that unless he answer by the 30th day of July, A. D. 1877, the petition of the said plaintiff, this day filed against him in the clerk's office of said court, said petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 9th day of July, 1877.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 26th day of June, A. D. 1877, and in the 101st year of the Independence of the United States of America.

Attest: WATSON B. SMITH, *Clerk.*

Attached to the said summons is the return of the marshal in the words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 26th day of June, 1877, I received the within summons, and on the 27th day of June, 1877, I served the same upon the within-named George W. Frost, in Douglas county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the endorsements thereon.

WM. DAILY,
United States Marshal for the District of Nebraska,
By ELLIS L. BIERBOWER,
Deputy United States Marshal.

Marshal's cost, $2.06.

Said summons is endorsed as follows: No. 87, D. United States circuit court, district of Nebraska. Jno. I. Redick *vs.* Geo. W. Frost. Summons. Amount claimed of defendant by the plaintiff is $2,500 and int. from M'ch 1st, 1876. Filed June 27, 1877. Watson B. Smith, clerk. W. J. Connell, att'y for pl'ff.

Thereupon, afterwards, to wit, on the 30th day of July, 1877, an answer was filed in said case, which said answer is in words and figures following, to wit:

EXHIBIT "H."

Answer.

In the Circuit Court of the United States for the District of Nebraska.

115 JOHN I. REDICK, Pl'ff, *vs.* GEORGE W. FROST, Def't.

Now comes said defendant, George W. Frost, and for answer to the petition of said plaintiff, John I. Redick, filed herein, admits the making and signing of said agreement with said plaintiff, as in said petition set forth, and a copy of which is thereto attached.

Defendant further admits the commencement on his behalf by said plaintiff, as his attorney, of the said action on the equity side of the district court in and for Douglas county, Nebraska, against the Credit Mobilier of America, the Union Pacific Railroad Company, and Thomas C. Durant, and the prosecution thereof by said plaintiff, as in said petition alleged, and the rendering of the decree therein by the said district court, as set forth in said petition.

Defendant further says that, upon the rendering of said decree, both the plaintiff and defendants in said action prayed an appeal to the supreme court of said State, which was allowed by said district court.

Defendant admits that plaintiff offered to furnish him with the sum of 302.71, as alleged in said petition, with interest thereon from May 31st, 1869, but upon condition that defendant should execute to him as security for said sum a mortgage to the amount of $3,500 on said property; but this defendant refused to accept or receive said money on such terms, for the reason that they were unfair, unjust, and oppressive in the extreme.

That after the rendering of said decree as aforesaid and the granting of said appeal said decree was, on motion of John I. Redick, as attorney for this defendant, who was plaintiff in said action in the district court, changed and modified in the following words, to wit: "That the plaintiff shall have the right to supersede the operations of said decree by filing in said court a bond, to be approved by the clerk, in the sum of $700.00.

Defendant further says that, upon the changing and modification of said decree as aforesaid, he, the said defendant, should
116 have given a bond in the sum of $700, as ordered in said decree, conditional for the payment of said sum of $302.71, with interest thereon from the close of the term of said court, to the end that he might preserve to himself all the rights which he had acquired under and by virtue of said decree.

But the defendant alleges the fact to be that said plaintiff, his attorney in said suit in said district court, by reason of his negligence, carelessness, and unskillfulness, advised this defendant that a bond conditioned as aforesaid was unnecessary and needed not to be given under the terms of said decree in order to preserve to defendant his rights thereunder, and plaintiff advised defendant that the usual appeal bond required by law to be given in cases appealed to the Supreme Court and containing merely the conditions of such

appeal bond was all that was necessary to be given, and was entirely sufficient to satisfy the terms of said decree, and to preserve to defendant all his rights and privileges thereunder; and that said sum of $302.71 and interest, under the ruling of the court, need not be paid until thirty days after the six months allowed by law for the taking of an appeal to the Supreme Court.

Defendant says that he was at all times ready and able to give the bond required by said decree, but that, by reason of the advice and counsel of said plaintiff as aforesaid and said plaintiff's carelessness, negligence, and unskillfulness, he, said defendant, did give only the usual appeal bond as aforesaid, and defendant says that, by reason of said advice of said plaintiff, and by reason of said plaintiff's negligence, carelessness, and unskillfulness as aforesaid, he, said defendant, did forfeit and lose all his rights and privileges by virtue of said decree, and defendant did thereby lose his title to the property in controversy in said suit and his right to pay said sum of $302.71 and interest, and his right to receive from said Durant or said Burley a good and sufficient deed to said property; and defendant says that he was at all times ready and willing and able to pay said sum of $302.71 and interest, as required by said
117 decree, but that, by reason of said advice and negligence, carelessness, and unskillfulness of said plaintiff as aforesaid, he lost his right so to pay the same as aforesaid.

Defendant denies that he has ever received from said Durant or said Burley, or any other person or persons, any conveyance or deed or title of any nature or kind whatsoever of, in, or to said property, nor has any person, for this defendant's use or benefit, received any deed or title to said property, but defendant avers the fact to be that the title to said property still remains in said Durant, and said defendant has lost all his right to the same under said decree for the reasons aforesaid.

And, further answering said petition, said defendant charges the fact to be that said plaintiff, as his attorney in said suit, was also careless, negligent, and unfaithful in this, to wit, that he neglected to set forth in the petition in said suit, and to pray judgment therefor against the defendants therein and in favor of this defendant, who was the plaintiff in said suit, a claim of $500 in favor of this defendant against the Credit Mobilier of America, one of the defendants in said suit, for material of various kinds furnished by said Credit Mobilier for the building of a house for this defendant and charged to him, but which material was afterwards used by said Credit Mobilier for other purposes, and was not credited by it to said defendant, as should have been done; that defendant frequently called the attention of plaintiff to this claim, and urged him to set forth the same in said petition, but said plaintiff wholly failed and neglected to do so, although he repeatedly promised defendant that he would do so, whereby [by] the neglect, carelessness, and unfaithfulness of plaintiff this defendant was deprived of his right as aforesaid against said Credit Mobilier in said sum of $500, and that by reason of the premises said defendant suffered damages in said sum of $500.

Defendant further says that in his said petition in said action in said district court he prayed, among other things, for an accounting between himself and the defendants in said action upon
118 various items, of which one was set forth in said petition in the following words, to wit: "To labor furnished and expenses paid out by complainant from the date of his employment to May, '69, in the entertainment of guests of defendants at his house and elsewhere, at the special instance and request of defendants, and for the especial benefit of said corporation, $2,000." And defendant charges the fact to be that said plaintiff, as his attorney in the prosecution of said suit, was negligent, careless, and unfaithful in this, to wit, that he wholly failed and neglected to have the petition in said suit amended so as to show that defendant claimed $2,000 annually for the care of guests of defendants in said suit instead of $2,000 as the whole sum, as above shown; that plaintiff repeatedly told defendant that he would attend to that, and that he had done it, whereas he had only inserted in said petition, after the same was drawn and sworn to, the words "per annum" in pencil marks, but wholly failed and neglected to have said petition amended in that behalf in the proper manner, whereby, by said neglect, carelessness, and unfaithfulness, this defendant was deprived of his rights against defendants in said suit in a large sum, to wit, $—, and that by reason of the premises said defendant suffered damages in said sum of $—.

Defendant denies that the services of plaintiff as his attorney in said suit were worth the sum of $2,500 or any other sum, for the reason that plaintiff, by his neglect, carelessness, unskillfulness, and unfaithfulness, as aforesaid, wholly failed to obtain for defendant a good and perfect title to said property, or any title whatever; and defendant denies that he is indebted to said plaintiff in said sum of $2,500 or any other sum.

Wherefore defendant prays judgment against said plaintiff in the sum of $— damages by defendant sustained, as herein set forth, and the costs of this suit.

J. L. WEBSTER AND R. E. GAYLORD,
Att'ys for Def't.

119 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

R. E. Gaylord, being first duly sworn, deposes and says that he is one of the attorneys of defendant, George W. Frost, in the above-entitled action, and that said defendant is now absent from said State and district, which is the reason why this verification is made by this affiant. Affiant further says that he knows the contents of the foregoing answer, and that he believes the facts therein stated to be true.

R. E. GAYLORD.

Subscribed in my presence and sworn to before me this 30th day of July, A. D. 1877.

WATSON B. SMITH, *Clerk.*

Said answer is endorsed as follows: No. 87. D. Circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Answer. Filed July 30, 1877. Watson B. Smith, clerk. J. L. Webster and R. E. Gaylord, def't's att'ys.

Thereupon, afterwards, to wit, on the 30th day of July, 1877, an affidavit was filed in said case, which said affidavit is in words and figures following, to wit:

EXHIBIT "I."

Affidavit for Attachment.

STATE AND DISTRICT OF NEBRASKA, *ss:*

In the Circuit Court of the United States for the Eighth Judicial District of Nebraska.

JOHN I. REDICK, Pl'ff, *vs.* GEORGE W. FROST, Def't.

John I. Redick, being first duly sworn, says he is the plaintiff named in the above-entitled action, which said action was commenced by said plaintiff against said defendant above named in said U. S. circuit court for the district of Nebraska to recover from the said defendant the sum of $2,500 and interest from March 1st, 1876, now due and payable to the said plaintiff from the said de-
120 fendant in a certain contract in writing for the payment of said sum by said defendant to said plaintiff for certain legal services duly rendered and performed by said plaintiff for said defendant at his special instance and request, as will more fully and at large appear by a copy of said contract attached to plaintiff's petition filed herein, as well also as by the allegations in said petition contained.

Affiant further says that his said claim of $2,500 and interest from March 1st, 1876, against said defendant is just, and that the nature thereof is as stated above, and that said sum of $2,500 and interest from the 1st day of March, 1876, is the amount which affiant believes he, the said plaintiff, ought to recover thereon. Affiant further says that the said defendant is a non-resident of the State of Nebraska. Affiant further says that said defendant is about to convert a part of his property into money for the purpose of placing it beyond the reach of his creditors.

Affiant further says that said defendant has property and rights of action which he conceals. Affiant further says that he has good reason to and does believe that George P. Bemis, a person residing and being within Douglas county, in said State and district of Nebraska, has property of the said defendant in his possession, to wit, moneys in a sum to affiant unknown, parlor furniture, carriage, one cow, and other personal property which affiant is unable to describe.

And further affiant saith not.

JOHN I. REDICK.

Subscribed in my presence and sworn to before me this 28th day of July, 1877.

WATSON B. SMITH, *Clerk.*

Said affidavit is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Affidavit for attachment. Filed July 30, 1877. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 30th day of July, 1877, an undertaking was filed in said case, which said undertaking is in words and figures following, to wit:

121 EXHIBIT "J."

Undertaking.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST, Defendant.

Whereas John I. Redick has commenced a civil action in said U. S. circuit court for the district of Nebraska to recover the sum of $2,500 and interest from the 1st day of March, 1876; and whereas the said John I. Redick has applied to the clerk of said court, by filing the necessary affidavit, for an order of attachment to be issued in the said action against the said George W. Frost:

Now, therefore, we, John I. Redick and Wm. M. Marlow, of Omaha, Neb., hereby undertake to the said George W. Frost, in the penal sum of $6,000, that the said John I. Redick shall pay the said George W. Frost all damages which the said Frost may sustain by reason of said attachment, if the order should have been wrongfully obtained.

Dated at Omaha, Neb., July 30, 187–.

JOHN I. REDICK.
W. M. WARDEN.

I, Watson B. Smith, clerk of said court, do hereby approve the foregoing undertaking and the sureties thereto.

Dated Omaha, Neb., July 30, 1877.

WATSON B. SMITH, *Clerk.*

Said undertaking is endorsed as follows, to wit: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Undertaking. Filed July 30, 1877. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 2nd day of August, 1877, an attachment was filed in said case, which said attachment is in words and figures following, to wit:

EXHIBIT "K."

DISTRICT OF NEBRASKA, *ss:*

In the Circuit Court of the United States for the District of Nebraska.

122 JOHN I. REDICK *vs.* GEORGE W. FROST.

The President of the United States of America to the marshal of the district of Nebraska, Greeting:

You are hereby commanded to attach and keep safely the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the above-named defendant in your district not exempt by law from being applied to the payment of the above-named plaintiff's claim, or so much thereof as will satisfy the said plaintiff's claim, for twenty-five hundred and fifty dollars—the probable costs of this action. You will make due return of this order on the 18th day of August, A. D. 1877.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of July, A. D. 1877, and in the 102nd year of the Independence of the United States of America.

[SEAL.] WATSON B. SMITH, *Clerk.*

Attached to said attachment is the return of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 31st day of July, 1877, I received this attachment, and on the 31st day of July, 1877, I served the same by attaching the following goods, chattels, and effects of the within-named defendant, to wit: 1 carriage, 1 green rep parlor set furniture, 1 green velvet parlor set furniture, 1 bed-room set furniture; also lots 3 and 4, in block 52, city of Omaha, Douglas county, Nebraska. I left with the occupant of said lots a certified copy of the attachment with all the endorsements thereon. All the above and foregoing proceedings were in the county of Douglas and State and district of Nebraska. The appraisement and inventory of said goods and chattels and effects is herewith returned.

WM. DAILY, *U. S. Marshal,*
By ELLIS L. BIERBOWER, *Deputy.*

Marshal's costs, $7.00; $2.00 p'd by pl'ff to appraisers.

123 EXHIBIT "L."

Appraisement and Inventory.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

We, the undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and S.

A. Orchard, and Martin Dunham, two [dis]interested residents of Douglas county, State and district of Nebraska, the said residents being duly sworn by said marshal to make a true and impartial appraisement and inventory of the following property levied upon and taken by virtue of an attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise and inventory said property as its real value in money, to wit:

1 carriage	$250 00
1 green rep parlor set	80 00
1 green velvet parlor set	80 00
1 bed-room parlor set	50 00
Lots 3 and 4, in block 52, city of Omaha, Douglas county, Neb., { lot 3	2,000 00
	lot 4	4,000 00
Total	$6,460 00

Given under our hands this 31st day of July, 1877.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska,
By ELLIS L. BIERBOWER, *Deputy.*
S. A. ORCHARD.
M. DUNHAM.

Said attachment is endorsed as follows: No. 87, D. United States circuit court, district of Nebraska. John I. Redick *vs.* George
124 W. Frost. Attachment. Filed August 2, 1877. Watson B. Smith, clerk. W. J. Connell, pl'ff's attorney.

Thereupon, afterwards, to wit, on the 2nd day of August, 1877, a garnishee summons was filed in said case, which said summons is in words and figures following, to wit:

EXHIBIT "M."

DISTRICT OF NEBRASKA, *ss:*

The President of the United States of America to the marshal of the district of Nebraska, Greeting:

We command you to summon George P. Bemis, if he be found in your district, to be and appear before the judges of the circuit court of the United States for the district of Nebraska aforesaid, at Omaha, on the 22nd day of August, 1877, at 10 o'clock a. m., to answer such interrogatories as shall be propounded to him touching the goods, chattels, rights, and credits of George W. Frost in his possession or control, and which may come to his possession or control before the return of this writ.

Hereof fail not, and of this writ make legal service and due return on the 22nd day of August, 1877.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 2nd day of

August, 1877, and in the 102nd year of the Independence of the United States of America.

Attest: [SEAL.] WATSON B. SMITH, *Clerk.*

Attached to said summons is the return of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 2nd day of August, 1877, I received the within summons, and on the 2nd day of August, 1877, I served the same upon the within-named George P. Bemis, in Douglas county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the endorsements thereon.

WM. DAILY,
United States Marshal for the District of Nebraska,
By ELLIS L. BIERBOWER,
Deputy United States Marshal.

125 Said summons is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Garnishee summons. Filed August 2, 1877. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 7th day of August, 1877, an answer was filed in said case, which said answer is in words and figures following, to wit:

EXHIBIT "N."

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK
vs. } No. 87, D.
GEORGE W. FROST.

Answer of garnishee, George P. Bemis, in the above-entitled cause, taken before Watson B. Smith, clerk of said court, by order of court, this 7th day of August, 1877, in open court.

1st Ques. Where do you reside?
Answer. In Omaha, Nebraska.
2 Ques. Whose premises do you occupy?
Ans. *In* premises of Mr. or Mrs. Frost; I don't know which.
3 Ques. To whom do you pay rent?
Ans. I don't pay rent.
4 Ques. Who put you in possession?
Ans. The arrangement for my occupying the premises were made between Mrs. Frost and my wife, and afterwards endorsed by Mr. Frost.
5 Ques. What is the arrangement?
Ans. We were to occupy the house, looking after it and everything in it; to pay no rent for no definite time, or until they returned.

6 Ques. What arrangement did Frost or Mrs. Frost tell you they or either of them had made with Dillon, Durant, or any one else touching their occupancy or title of the house since the determination of the suit between him and the railroad Co. and the Credit Mobilier in the State court?

126 Ans. I don't think they have said anything to me directly, either Mr. or Mrs. Frost. I think Mr. Frost did say that he had seen Mr. Woolworth and he advised him to go on to New York or somewhere East and fix up the title to his house, or he should lose his title to the property, stating that Mr. Redick said that the amount to be deposited was not required to be paid into court inside of seven months, when he, Mr. Woolworth, claimed that it ought to be paid in six months; thereupon he, Mr. Frost, went to New York and saw Durant or the proper parties, and in that way saved the house and lot, which otherwise he would have lost. I don't know who has the deed or the details of the arrangement, but somehow it was all fixed, so he stated.

7 Ques. Did he not state to you that he or some one had a quit-claim deed?

Ans. He did not say who the — was to.

8 Ques. Do you hold any personalty of any kind or have it under your control belonging to Mr. or Mrs. Frost; if so, what?

Ans. We have the furniture in the house belonging to the family; we have charge of a carriage, a heifer in Iowa some place; that is all I think of. I am not personally indebted to Mr. Frost.

9 Ques. About when was it that Mr. and Mrs. Frost stated that they had the title to the property fixed?

Ans. Mr. Frost made the statement a few days before he went West.

GEORGE P. BEMIS.

Subscribed in my presence and sworn to before me this 7th day of August, 1877.

WATSON B. SMITH, *Clerk.*

Said answer is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Answer of garnishee, George P. Bemis. Filed Aug. 7, 1877. Watson B. Smith, clerk.

127 Thereupon, afterwards, to wit, on the 7th day of August, 1877, a replication was filed in said case, which said replication is in words and figures following, to wit:

EXHIBIT "O."

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

And now comes the plaintiff, and, for replication to the answer herein filed, says that it is untrue that at the time said plaintiff offered to advance said defendant three hundred and two and .72

dollars and interest, that he demanded of said Frost a mortgage on said property for thirty-five hundred dollars or any other security; that the plaintiff at that time, and for some time thereafter, considered that he was already secured by reason of his attorney's lien in the premises, and the allegations in that behalf are wholly false, but frequently insisted upon said Frost paying said amount into court to protect his own rights, as well as this plaintiff's, in the property, which he refused to do or permit this plaintiff to do for him.

Plaintiff, further replying, says to the court that the prayer for an appeal on the part of said Frost was made with a view only of having the benefit of a cross-appeal in case the defendants in said action should perfect their appeal to the Supreme Court; that this plaintiff caused the bond to be reduced to seven hundred dollars for the sole purpose of getting it so small that he could procure some one as security upon it; that he well knew the terms of the decree and was urged to comply with it by this plaintiff, but no, he would take an ordinary appeal to the Supreme Court, and requested this plaintiff to prepare such a bond, which was done; and plaintiff denies that he advised said Frost that he need not give a bond conditioned as required by said decree in order to preserve to defendant his rights there-
128 under, or that the usual appeal bond required by law need only to be given and that was all that was necessary, and was entirely sufficient to satisfy the terms of the decree and to preserve to said Frost all his rights and privileges thereunder; and that the said sum of three hundred and two and $\frac{71}{100}$ dollars and interest need not be paid until thirty days after the six months allowed by law for the taking of an appeal to the Supreme Court, as charged and set forth in said answer; denies that said defendant was always ready and willing to pay the amount of said decree; denies that he was misled or ill-advised or injured in any way by reason of the negligence, carelessness or unskillfulness of said plaintiff; denies that he has lost his interest in said premises or forfeited his rights and privileges by virtue of said decree or the title to the property in controversy, but alleges that he refused to pay the money under said decree or permit this plaintiff to pay it, for the sole purpose of cheating and defrauding this plaintiff out of his attorney's fee; that he is occupying the premises since said suit undisturbed, with the consent and understanding of the defendants in said action.

Plaintiff, replying further, says that he denies that he was careless negligent, or unskillful in not claiming in said bill five hundred dollars against said Credit Mobilier of America for materials furnished by it to said Frost for the building of a house, and afterwards said materials being used by said Credit Mobilier, for the reasons—first, the claim had been outlawed at least four or five years; and, second, the claim was not made known to me or mentioned by said Frost until long after the filing of said second petition and just before the case was tried, and denies that the defendant suffered any injury by failing to plead the same.

Plaintiff, replying further, says that there were two petitions filed in said original suit, both of which were sworn to by defendant

Frost; in the first one of which said Frost made no claim for expenses paid out in the entertainment of guests; in the second
129 petition such claim was made, and this plaintiff made the necessary allegation in said petition, leaving the amount and time in blank, directing said defendant to fill in such amount as he thought proper, and this plaintiff alleges [that] said Frost filled the amount of two thousand dollars in figures and refused to fill the blank in writing "per annum," and denies that he inserted the words "per annum" in pencil marks after the bill was drawn and verified, but before it was verified, as a mere guide to said Frost to fill up, if true, and denies that the defendant was injured by reason of the unskillfulness, negligence, or carelessness of the plaintiff in that behalf, or that he has suffered any loss or damage by reason thereof, but charges that in all things connected with said suit, until the obtaining of the said final decree, he used his best professional skill and judgment and worked ardently and faithfully in the interest of said Frost, and by reason of said decree he has in some way procured a recognized title to said premises, and his possession [is] made peaceful and quiet; and this plaintiff denies each and every allegation in said answer contained not heretofore answered, avoided, or denied.

JOHN I. REDICK, *Per Se.*

W. J. CONNELL, *Pl'ff's Att'y.*

STATE OF NEBRASKA, } *ss:*
Douglas County, }

John I. Redick, being duly sworn, deposes and says that I am the plaintiff in the above-entitled action; that I have read the foregoing replication and know the contents thereof, and that the same is true as I verily believe.

JOHN I. REDICK.

Subscribed in my presence and sworn to before me this eighth day of August, eighteen hundred and seventy-seven.

WATSON B. SMITH, *Clerk.*

Said replication is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Replication. Filed Aug. 7, 1877. Watson B. Smith, clerk. John I. Redick in per. W. J. Connell, pl'ff's att'y.

130 Thereupon, afterwards, at the November adjourned term of said court, on the 8th day of March, 1878, the following proceedings were had in said case, as appear of record on folio 407, Journal D of said court.

EXHIBIT "P."

Trial.

JOHN I. REDICK *vs.* GEORGE W. FROST.

Now come the parties herein, by their attorneys; also came the following named persons as jurors, to wit—1, Frank Norris; 2, Wm. F. Wilson; 3, H. S. Moody; 4, Seth T. Cole; 5, J. T. Allen; 6, W. W. Copeland; 7, R. C. Elvin; 8, Levi Kennard; 9, Orson Wilson; 10, Morris M. Sullivan; 11, W. O. Saunders; 12, John Hofstead, who were duly empannelled and sworn according to law; and the said jury having heard the testimony adduced in part, said cause was continued until to-morrow at 10 o'clock.

Thereupon, afterwards, at the said November adjourned term of said court, on the 9th day of March, 1878, the following proceedings were had in said case, as appear of record on folio 408, *et seq.*, of Journal D of said court:

EXHIBIT "Q."

Verdict.

JOHN I. REDICK *vs.* GEORGE W. FROST.

This day again comes the said parties, by their attorneys; also came the jury heretofore empannelled and sworn herein; and the said jury, having heard the remaining testimony, the argument and charge of the court, retire to their room in charge of a bailiff, duly sworn, for deliberation; and now the said jury appear in open court and present to the court their verdict in writing, which is in words and figures following, to wit:

131 *Verdict.*

In the Circuit Court of the United States within and for the District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST *et al.*, Defendants.

We, the jury, duly sworn and empannelled to try the issues joined herein, do find for the plaintiff in the sum of twenty-three hundred and eighty-eight and $\frac{85}{100}$ dollars.

O. WILSON, *Foreman.*

Thereupon said defendant, by J. L. Webster, Esq., his attorney, gave notice that he would file a motion for a new trial of this case

Thereupon, afterwards, to wit, on the 12th day of March, 1878, a motion was filed in said case, which said motion is in words and figures following, to wit:

"EXHIBIT R."

Motion for New Trial.

In the Circuit Court of the United States, District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST, Defendant.

Now comes defendant and moves the court to set aside the public verdict herein and grant a new trial, for the following reasons, to wit:

I. That the verdict is excessive and not sustained by the proof.

II. That the court [erred] in admitting testimony of plaintiff and objected to by the defendant.

III. That the court erred in giving the instructions to the jury.

IV. That the court erred in refusing to give instructions asked by the defendant.

V. That the verdict is not supported by the law and evidence in the case.

GEO. W. FROST,
By JNO. L. WEBSTER, *His Att'y.*

Said motion is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Motion for a new trial. Filed March 12, 1878. Watson B. Smith, clerk. Jno. L. Webster.

132 Thereupon, afterwards, at the November adjourned term of said court, on the 14th day of March, 1878, the following proceedings were had in said case, as appear of record on folio 427, Journal D of said court:

EXHIBIT "S."

Motion for New Trial Overruled and Judgment.

JOHN I. REDICK *vs.* GEORGE W. FROST.

This cause came on for hearing on the motion of the defendant herein to set aside the verdict, and for a new trial herein, and the court, on consideration thereof, overruled the same.

It is therefore ordered and adjudged by the court that the said plaintiff recover from the said defendant the sum of two thousand three hundred eighty-eight and $\frac{85}{100}$ [dollars] ($2,388.85), as heretofore by the verdict of the jury found due him, together with his costs herein expended, and that an order of sale of the property attached herein and execution issue at the expiration of 42 days from this day.

Thereupon, afterwards, to wit, on the 22nd day of April, 1878, a motion for leave to file a petition for new trial was filed in said case, which said motion is in words and figures following, to wit:

"EXHIBIT T."

Motion for Leave to File Petition for New Trial.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST, Defendant.

Now comes said defendant, George W. Frost, by Jno. L. Webster and Ralph E. Gaylord, his attorneys, and makes this his application to said court for leave to file in said cause his petition for a new trial herein within the time fixed by the rules of said court.

JNO. L. WEBSTER,
RALPH E. GAYLORD,
Att'ys for Defendant.

22nd April, 1878.—Leave given to file, &c., within time fixed by law.

ELMER S. DUNDY, *Judge.*

133 Said motion is endorsed as follows: 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Motion for leave to file petition for new trial. Filed April 22, 1878. Watson B. Smith, clerk. Jno. L. Webster, Ralph E. Gaylord, def'ts' att'ys.

Thereupon, afterwards, at the November term of said court, on the 22nd day of April, 1878, the following proceedings were had in said case, as appears of record, on folio 430, Journal D, of said court:

EXHIBIT "W."

JOHN I. REDICK
vs.
GEORGE W. FROST. } 87, D.

On motion of said defendant, by Messrs. Webster and Gaylord, his attorneys, leave is hereby granted him to file a petition for a new trial of this case within the time fixed by the statute in such case made and provided.

Thereupon, afterwards, to wit, on the 23rd day of April, 1878, a petition was filed in said case, which said petition is in words and figures following, to wit:

EXHIBIT "V."

Petition for a New Trial.

In the Circuit Court of the United States, District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST *et al.*, Def'ts.

Now comes George W. Frost, defendant herein, and petitions the court to grant a new trial in this cause, and in support thereof avers that he has a good and meritorious defense to said action upon the

merits, as more fully set out in the answer on file therein; that at the time of the commencement of this suit this petitioner had been appointed United States Indian agent for the Crow Indians, and was under orders from the Commissioner of Indian Affairs to take his immediate departure for said Crow Indian agency, at Crow agency, in Montana; that the plaintiff, John I. Redick, knew of said facts when he commenced said suit, and that the summons therein
134 was served upon defendant upon the eve of his departure from Omaha for said Crow agency, Montana; that defendant could not remain in the city of Omaha a sufficient length of time after the service of said summons to have prepared and filed an answer in said cause or to have his testimony taken herein, and that by reason whereof your petitioner did not have taken and filed herein his deposition before his departure for Crow agency, Montana.

That at said time your petitioner did not know but that he could have his deposition taken at Crow agency, Montana, upon his arrival there, after the service of due notice, and did not learn to the contrary until his arrival at such agency, when he learned for the first time that there was no officer there with power to take depositions.

That when your petitioner left Omaha as aforesaid he intended and believed that he could so arrange his affairs as such Indian agent as to return to Omaha in time to attend the next term of said United States circuit court, and he then fully intended so to do, as he then had other important lawsuits pending in the district court for Douglas county, and which said last-named court would be in session in November, 1877, and at the same time when this cause would be called in this court; that upon my arrival at Crow agency I had become sick, from the result of the long journey from Omaha to Ogden by railroad and from thence to Helena and from Helena to Crow agency, over the mountains and by stage—a distance of nearly 700 miles; that the physical ailment of your petitioner was such and so continued that it was unsafe and dangerous to the life of petitioner to undertake a journey from Crow agency to Omaha to attend said courts, and therefore petitioner did not return to Omaha as he had intended, as hereinbefore set out.

That thereupon, and as soon as your petitioner became satisfied that he could not return to Omaha in time to attend said court and that there was no one at Crow agency authorized to take depositions, he communicated such information to his attorneys in this
135 case at Omaha by due course of mail; that at that time there was no officer authorized to take depositions at a point nearer than Bozeman, a distance of 115 miles over a mountainous road and State, and that at that time your petitioner was a stranger at Bozeman and did not know the name of any one there authorized to take depositions; that your petitioner is informed and believes that his attorneys did, under the circumstances, make an application for a continuance of this cause to the next term of this court, but that said application was sustained so far as to continue this cause to the adjourned term merely.

That thereafter your petitioner by due course of mail received a

letter from his attorneys informing him that said cause was adjourned to the adjourned term of this court and asking the name of officer before whom his deposition could be taken; that immediately upon receipt of such letter petitioner sent to counsel the name of an officer who had just been appointed at Crow agency as a notary, before whom depositions could be taken, and in due course of mail a notice came to petitioner naming time and place for taking deposition at Crow agency, and on the 8th day of February; that petitioner received said notice at Bozeman, where petitioner then was and a distance of 115 miles from Crow agency, and on the 5th day of February, 1878, but three days before time the deposition should be taken; that it was impossible for petitioner at that time to leave his said business and reach Crow agency by the 8th day of February, 1878; that petitioner made effort to reach Crow agency in time to take said deposition, but, owing to bad roads and the breaking down of the conveyance in which petitioner travelled, he did not reach Crow agency until after the 8th day of February, 1878.

That for these reasons the deposition was not taken and the trial proceeded without the testimony of petitioner.

That, owing to the great distance from Omaha to Crow agency and the mode of travel, it requires about 17 days for a letter by usual course of mail to go from one point to the other; that
136 petitioner used all due diligence in the correspondence with his counsel and in making all efforts to get his case ready for trial, and that great injustice has been done him in the verdict rendered in this cause.

That petitioner will testify, among other things, that said Redick did offer to furnish petitioner money to pay the amount decreed to be paid Credit Mobilier and Thomas Durant, but only on condition that petitioner would execute to him, Redick, a mortgage on the house and lots for $3,500; that said Redick did not at any time offer to furnish petitioner said money in any manner other than as a loan.

That petitioner refers to the answer on file herein as a part of this petition and as showing the defense which defendant could and would make to this case if he was admitted to have a new trial thereof; that this petition is not made for delay, but that justice may be done in the premises; that if a new trial should be granted herein petitioner will use all due speed to hasten a trial thereof and upon the merits.

GEO. W. FROST.

Subscribed and sworn to before me this 11th day of May, A. D. 1878.

[SEAL.] R. P. VIVION,
Notary Public.

Said petition is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. Jno. I. Redick *vs.* George W. Frost. Petition for new trial. Filed April 23rd, 1878. Watson B. Smith, clerk. Jno. L. Webster, Ralph E. Gaylord, att'ys for def't.

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Thereupon, afterwards, at the May adjourned term of said court, on the 22nd day of June, 1878, the following proceedings were had in said case as appears of record on folio 632, Journal D of said court:

EXHIBIT "W."

JOHN I. REDICK }
vs. } 87, D.
GEORGE W. FROST. }

On this day this cause came on for hearing on the motion and petition of said defendant for a new trial of this cause, and was argued to the court by attorneys for the parties herein; whereupon it is ordered by the court, the same being advised in the
137 premises, that said motion and petition be, and the same *is* hereby, denied, and the order of this court, the former order of this court staying order of sale and execution herein, is hereby vacated.

Thereupon, afterwards, to wit, on the 26th day of August, 1878, an order of sale on attachment was filed in said case, which said order of sale is in words and figures following, to wit:

EXHIBIT "X."

THE UNITED STATES OF AMERICA, }
District of Nebraska, } *ss*:

The President of the United States of America to the marshal of the district of Nebraska, Greeting:

Whereas John I. Redick, on the 30th day of July, 1877, sued out of the clerk's office of the circuit court of the United States for said district an order of attachment, directed and delivered to the marshal of said district, requiring him to attach the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of George W. Frost in said district not exempt by law from being appropriated and applied to the payment of the plaintiff's claim, or so much thereof as would satisfy the plaintiff's claim, and said marshal returned said order executed by attaching the following property, to wit, one carriage, one green rep parlor set furniture, one green velvet parlor set furniture, one bed-room set furniture; also lots three (3) and four (4), in block 52, city of Omaha, Douglas county, Nebraska; and afterwards such proceedings were had in said circuit court that at the Nov. adjourned term thereof, A. D. 1877, the said plaintiff recovered a judgment against said defendant for the sum of $2,388.85 damages and $80.50, the costs of said action, you are therefore commanded to proceed as upon execution to advertise and sell so much of the judgment and costs, with interest thereon from the 14th day of March, A. D. 1878, until paid, together with accruing costs, by virtue of this order; and do you make return of this order, together with your proceedings thereon, within sixty days from the date hereof.

138 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court, at Omaha, this first day of July, A. D. 1878, and of the Independence of the United States the 102nd year.

[SEAL.] WATSON B. SMITH, *Clerk.*

Attached to said order of sale are papers in words and figures following, to wit:

EXHIBIT "Y."

UNITED STATES OF AMERICA, }
District of Nebraska, } ss:

I hereby certify and return that I received this order July 1st, 1878, and on July 20th, 1878, I, together with John Campbell and John B. Furay, two disinterested freeholders, residents of Douglas county, State and district of Nebraska, said freeholders having been first duly sworn by me to impartially appraise the within-named defendant's interest in and to the within-described real property at its value in money, I made an impartial appraisement of said defendant's interest in said property, and said appraisement, duly signed, a copy of which I forthwith filed in the office of the clerk of the within-named circuit court, is herewith returned; and on the 20th day of July, 1878, I caused to be published in the Omaha Bee, a newspaper published in and in general circulation in said county, State, and district, a notice that I would, on the 24th day of August, 1878, at 10 o'clock a. m. of said day, at the north door of the United States post office, custom and court house, in the city of Omaha, Douglas county, State and district of Nebraska, sell at auction the property described in this order; and, after said notice had been published, for at least thirty days and on the day and at the time and place mentioned, I offered all said property for sale, and sold the same to John I. Redick, as follows, to wit:

One carriage	50	00
One green rep parlor set furniture	30	00
One green velvet set furniture	30	00
One bed-room set furniture	20	00
139 Also lot 3, in block 52, city of Omaha, Douglas Co., Neb.	50	00
" 4 " " "	300	00
Total	480	00

Said sums being the highest amounts offered and not less than two-thirds of the appraised value of said real property.

WILLIAM DAILY, *U. S. Marshal,*
By ELLIS L. BIERBOWER, *Deputy.*

EXHIBIT "Z."

Appraisement.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and John Campbell and John B. Furay, two disinterested freeholders, residents of Douglas county, State and district of Nebraska, the said freeholders being duly sworn by said marshal to make a true and impartial appraisement of the defendant's interest in the following property ordered to be sold by virtue of an order for sale on attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise said property at its real value in money, after deducting all prior liens thereon, to wit:

Omaha, Douglas Co., Neb.

Lot 3, in block 52	50 00
" 4, " "	450 00
Total	$500 00

(The said defendant's only interest in said property, as appears by the records of Douglas county, Neb., being that of occupancy and possession, we appraise the said interest as above.)

Given under our hands this 20th day of July, 1878.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska,
By ELLIS L. BIERBOWER, *Deputy.*
JOHN CAMPBELL.
JOHN B. FURAY.

140 EXHIBIT "A A."

U. S. Marshal's Sale.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

In pursuance and by virtue of an order of sale on attachment issued out of the circuit court of the United States for the district of Nebraska, bearing date July 1st, 1878, and to me directed and delivered, I will, on the 24th day of August, 1878, at 10 o'clock a. m., at the north door of the United States post office, custom and court house building, in the city of Omaha, Douglas Co., State and district of Nebraska, sell to the highest and best bidder, at public auction, the property described in said order of sale as follows: One

carriage, one green rep parlor set furniture, one green velvet parlor set furniture, one bed-room set furniture; also lots three (3) and four (4), in block 52, city of Omaha, Douglas county, Nebraska, said property being offered for sale, and will be sold to satisfy a judgment of said court rendered at the November adjourned term thereof, A. D. 1877, in favor of John I. Redick, plaintiff, and against George W. Frost, defendant.

WILLIAM DAILY,
U. S. Marshal.

W. J. CONNELL,
Plaintiff's Attorney.

EXHIBIT "B B."

Said order of sale is endorsed as follows: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Order of sale on attachment. Damages, $2,388.85; costs, $80.50. Interest from March 14, 1878. Marshal's —, $33.50. Returned and filed Aug. 26, 1878. Watson B. Smith, clerk. W. J. Connell, plaintiff's attorney. Original costs: Clerk, 41.20; marshal, 16.18; attorney's doc. fee, 20.00; pl'ff's wit's' fees, 3.20. $80.58.

Thereupon, afterwards, at the May adjourned term of said court, on the 10th day of September, 1878, the following proceedings were had in said case, as appears of record on folio 643, Journal D of said court.

141 EXHIBIT "C C."

JOHN I. REDICK
vs.
GEORGE W. FROST. } 87, D.

On motion of Messrs. Redick and Connell, attorneys for said plaintiff, said defendant is ruled to show cause, if any he has, by 10 o'clock to-morrow morning why the sale made herein by William Daily, U. S. marshal, should not stand ratified and confirmed.

Thereupon, afterwards, to wit, on the 10th day of September, 1878, a motion was filed in said case, which said motion is words and figures following, to wit:

EXHIBIT "D D."

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

Now comes the defendant, and moves the court to set aside the sale of the real estate made herein for the reasons following:

I. That it appears from said appraisement and returns that defendant had no interest in said lands that is subject to such sale.

II. That said appraisement was not made as required by law.

III. That the appraisers, in arriving at the value of defendant's

interest in said lands, deducted from said interest outstanding titles as well as liens upon said lands.

IV. That said lands constituted the homestead of defendant and are not liable to sale.

V. That the order was to sell said lands, and the officer only sold an interest in said lands.

E. WAKELY,
JNO. L. WEBSTER,
Att'ys for Defendant.

EXHIBIT "E E."

Said motion is endorsed as follows: 87, D. U. S. circuit court, district of Neb. John I. Redick *vs.* George W. Frost. Motion to set aside sale. Filed Sept. 10, 1878. Watson B. Smith, clerk. Wakely and Webster.

142 Thereupon, afterwards, at the January term of said court, on the 7th day of January, 1879, the following proceedings were had in said case, as appears of record on folio 170, Journal E of said court:

EXHIBIT "F F."

Confirmation of Sale.

JOHN I. REDICK *vs.* GEORGE W. FROST.

This cause coming on to be heard, upon motion of plaintiff to confirm the sale made herein by the U. S. marshal on the 24th day of August, 1877, of lots 3 and 4, in block 52, in the city of Omaha, to John I. Redick, the court, after hearing the arguments of counsel, and being fully advised in the premises, do find the proceedings in and about said sale in all respects regular and according to law, and the said sale is, therefore, by the court in all respects ratified and confirmed, and Wm. Daily, U. S. marshal, is hereby ordered and directed to execute and deliver to John I. Redick, the purchaser, a deed of said premises in the usual form, and that the plaintiff have execution for balance due on judgment.

To which order of the court defendant excepts.

Thereupon, afterwards, to wit, on the 22nd day of January, 1879, a motion was filed in said case, which said motion is in words and figures following, to wit:

EXHIBIT "G G."

Motion to Vacate Order Confirming Sale.

In the Circuit Court of the United States, District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

Now comes George W. Frost, and moves the court to set aside the order confirming the sale herein for the following reasons, to wit:

I. That the appraisement is irregular and not according to law.

II. That the appraisers deducted the outstanding tax deeds as liens upon the lands.

III. That the interest of said Frost in said lands as found
143 by appraisement is not an interest subject to sale.

IV. That said lands are and were the homestead of defendant, and not liable to sale.

JNO. L. WEBSTER,
Att'y for Defendant.

Said motion is endorsed as follows: 87, D. U. S. circuit court, district of Nebraska. Jno. L. Webster *vs.* George W. Frost. Motion to vacate order confirming sale. Filed Jan'y 22, 1879. Watson B. Smith, clerk. Jno. L. Webster.

Thereupon, afterwards, at the January adjourned term of said court, on the 27th day of March, 1879, the following proceedings were had in said case, as appears of record on folio 294, Journal E of said court.

EXHIBIT "H H."

JOHN I. REDICK
vs.
GEORGE W. FROST. } No. 87, D.

On this day this cause came on for hearing on the motion of said defendant to vacate the order of this court, entered Jan'y 7th, 1879, confirming the sale made herein by the U. S. marshal, and was argued by attorneys for the respective parties; whereupon it is ordered by the court, the same being fully advised in the premises, that said motion to set aside said sale be, and the same is hereby, overruled; to which ruling of the court said defendant excepts.

144 GEORGE W. FROST, called as a witness on the part of complainant as against the claim of Bryant in the cross-bill.

Examined by Mr. REDICK:

Int. 1. What time did you take possession of your house where you now live?

Ans. About the 15th of October, 1866.

Int. 2. When did you have it completely furnished with personal property?

Ans. I brought the furniture from the East that furnished it; it was always furnished.

Int. 3. From the time you moved into it?

Ans. Yes, sir; always.

Int. 4. State whether or not you had any other personal property from, say, during the year 1867 up to 1873 or 1874, besides furniture in your house. What other personal property did you have on the premises?

Objected to because it does not show that he had any other personal property on the premises; second, because, under the pleadings here, it is incompetent and immaterial, for the reason that it

does not show that Frost's property, if he had any, was liable for the taxes on this property. Ruling reserved.

Ans. I don't wish by this to be understood that the furniture in the house was mine.

Int. 5. I am not asking you that.

Ans. The house was furnished throughout.

Int. 6. What other personal property did you have that belonged to you or your family?

Ans. I had property that always belonged to me—blooded stock. I had fine horses.

Int. 7. Did you have them all the time from 1867 to 1872?

145 Ans. All that time.

Int. 8. What was the general value of all that property you had there?

Ans. It was varied.

Int. 9. Including furniture and all, how much did you have on the place?

Ans. On the whole?

Int. 10. Yes; altogether.

Ans. Couple thousand dollars.

Int. 11. Was that open to the view of the county treasurer?

Ans. Yes, sir.

Int. 12. Did they ever attempt to levy on it for city taxes?

Ans. Never.

Int. 13. How much property during these years did you have of your own on these premises?

Ans. Perhaps a thousand dollars a year; at least that. I had four or five head of blooded stock that were worth from one hundred and fifty to $200 per head. I had farm wagons and carriages and machinery for carrying on my farm out West; were always there. Things were always brought from the farm to this place.

Int. 14. State whether you had that property there during the years 1874 and 1875.

Ans. Yes, sir.

Objected to as immaterial. Ruling reserved.

Witness continues: Later than 1874. I had corn and grain there and other things from my farm.

Int. 15. Did the treasurer have means of knowing that you had this property there?

Ans. Yes, sir.

Int. 16. Did they, the treasurer and assessor, know you had the ownership of this property?

Ans. Yes, sir.

146 Int. 17. Did you have any talk with him about it?

Ans. Yes, sir; they knew. I paid my personal taxes.

Int. 18. Where was your farm you speak of?

Ans. In this county.

Int. 19. How far from the city?

Ans. Two places, one about five miles and another about eight miles, on the other side of the Papio.

Mr. Montgomery, on behalf of Thomas Bryant, objects to all this testimony about his farms and details as incompetent and immaterial. Ruling reserved.

Int. 20. About how much crop did you raise on these two farms every year?

Ans. I had 80 acres in the first; I had ten acres of the Bemis property; I had about forty acres of other property. I brought in a great many tons of hay; sometimes thirty tons, perhaps.

Int. 21. Were they all located in this county?

Ans. Yes, sir.

Int. 22. During all these years had you personal property enough to pay your taxes?

Ans. Yes, sir; abundance of it.

Cross-examination by Mr. MONTGOMERY:

Int. 23. When did you first have any personal property belonging to yourself?

Ans. Always had it there.

Int. 24. From the time of the flood?

Ans. A little after the flood; from 1866.

Int. Was this stock there all the time?

Ans. Not all of it; the horses were there.

Int. 24. Some of it was elsewhere?

Ans. Only except for a short time.

Int. 25. When did you dispose of this stock?

147 Ans. At different times.

Int. 26. Did you own it up to 1874?

Ans. Yes; I sold the last last March.

Int. 27. Did Mr. Redick ever have any possession or occupancy of these premises?

Ans. Never; I have had the occupancy ever since I moved on them, and when I went away I left Mr. Bemis to occupy them for me.

Int. 28. It has always been in your possession?

Ans. Yes, sir; my property has always been there.

Int. 29. You say property you owned has always been there?

Ans. Yes, sir; wagons, grain, hay, and everything of that kind.

148 Mr. Redick, on behalf of complainant Spitley, offered to introduce in the evidence the petition filed in the case of Redick *vs.* Frost, in the circuit court of the United States for the district of Nebraska, on the 26th day of June, 1877.

No objections having been made, said petition was received as evidence; which said petition is in words and figures following, to wit:

EXHIBIT I.

Petition.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK, Plaintiff, *vs.* GEORGE W. FROST, Defendant.

The said John I. Redick, plaintiff, of Denver, Colorado, and a citizen of the State of Colorado, complains of the said George W. Frost, defendant, of Omaha, Nebraska, and a citizen of the State of Nebraska, and for cause of action against said defendant alleges that at all the times and dates hereinafter mentioned plaintiff was an attorney and counsellor at law, and as such engaged in active practice in the city of Omaha, Nebraska; that on or about the 11th day of November, A. D. 1870, and for some time prior thereto, the said defendant consulted said plaintiff with reference to his equitable interest and legal rights in the premises hereinafter described, and with the view and for the purpose of recovering, if possible, the title to said premises from one Thomas C. Durant, trustee, in whom said premises then appeared of record, he, the said Durant, claiming to hold said premises for himself, the Credit Mobilier of America, and the Union Pacific Railroad Company; and, therefore, on said last-mentioned day, for the purpose of bringing an equitable action in the proper court to recover said title by proper decree, declaring that said Thomas C. Durant, trustee, aforesaid held said premises in trust for said George W. Frost, and in order more effectually to perfect an arrangement for that purpose, the said Frost, on or about the date last aforesaid, entered into a contract with
149 said plaintiff, which contract was in writing and was duly signed and executed by said plaintiff and by George W. Frost, and by the terms of said contract it was provided and agreed that, in consideration of the sum of $2,500, said plaintiff, as said attorney for said Frost, was to bring said suit and procure, through the courts, a good title to the premises then occupied by said Frost as his residence in the city of Omaha, Douglas county, Nebraska, the same being known and described as lots three (3) and four (4), in block fifty-two (52), and, in case of any settlement or arrangement of said suit, then said Frost was to pay in proportion only, and, in case said Frost failed to procure said title at all, then said plaintiff, as such attorney, was to have and receive for his services a mere nominal fee, to wit, the sum of $100, a copy of which said contract is hereto attached and made a part of this petition.

And the said plaintiff further alleges that, upon the making and execution of said contract as aforesaid and in pursuance thereof, the said plaintiff, as attorney for said Frost, commenced a suit in equity in the district court in and for Douglas county, Nebraska, for and on behalf of said Frost against said Thomas C. Durant, trustee, who held said property as aforesaid and in whose name, as trustee, said property appeared of record, and also against the Credit Mobilier of America aforesaid, which claimed an interest in said property by reason of the same being held by said Durant, as

trustee, he, the said Durant, being president of said Credit Mobilier of America, and also against the Union Pacific Railroad Company, a corporation, of which said Durant was vice-president.

And said plaintiff further alleges that said suit in equity was by him commenced as aforesaid for the purpose of securing to said Frost the title to said premises held by said Durant as aforesaid, as by the terms of his said contract he had agreed to do, and after a long, difficult, and vexatious litigation, which was closely contested by able counsel for and on behalf of said Durant, the Credit Mobilier of America, and the Union Pacific Railroad Company,
150 said plaintiff, as attorney for said Frost, secured for said Frost a final decree of the court in said suit, whereby it was ordered and adjudged by said court that upon said Frost depositing with clerk of said court, for the use of defendants in said suit, within thirty days after the close of the term of said court, to wit, the February, A. D. 1876, term thereof, the sum of $302.71, with interest on that sum from the 31st day of May, 1869, that the said Thomas C. Durant convey to said Frost, or cause to be conveyed to him, [by] a good and sufficient deed, with the usual covenants of warranty, the property in controversy, to wit, lots 3 and 4, in block 52, and that in default thereof Alfred Burley, appointed a special master for that purpose, should execute and deliver to said Frost such deed; and it was by said court further ordered and adjudged in said decree that said Thomas C. Durant, trustee, the Credit Mobilier of America aforesaid, and said Union Pacific Railroad Company be forever barred of all right, title, interest, or equity in or to said premises or any part thereof.

And said plaintiff further alleges that upon the rendition of the decree aforesaid, and within thirty days of the close of said term of court, the said plaintiff frequently offered to furnish said Frost with the said sum of $302.71 and interest, as required by said decree, for the purpose of depositing the same with the clerk of said court for the use of the defendants in said suit, and said Frost declined and refused to receive said money and deposit the same with said clerk; and said plaintiff further alleges that ever since the rendition of said decree he, the said plaintiff, has been and still is ready and willing to furnish said money and interest to said Frost for the purpose of enabling him fully to comply with the terms of said decree, but the said Frost, for the purpose of wronging said plaintiff and preventing him from fully carrying out the requirements of said decree, has declined and refused to pay the clerk of said court said sum, with interest, or to accept the same from said plaintiff for such purpose, but by means of said decree having been secured by plaintiff as aforesaid, the said Frost has made some arrangement,
151 the precise nature of which the said plaintiff is unable to state, with said Durant and the said Credit Mobilier of America aforesaid, by which said Durant was to deed said premises to said Frost or to his wife, or to some member of his family for him; and said plaintiff is informed and believes, and therefore alleges that such deed has been duly executed and is now in possession of said Frost, and that said Frost now has in himself, or some

member of his family for him, a good title to said premises, which title said plaintiff procured and said Frost now holds by reason of the learning, diligence, and skill of said attorney in said suit, and by reason of said decree obtained as aforesaid, and but for said decree said Durant would not have conveyed said premises, and said Frost is thereby now in the quiet, peaceable, and undisputed possession and occupancy of said premises, which are of great value, to wit, upwards of $12,000.

And the said plaintiff further alleges that said services by him performed in said suit as aforesaid were reasonably and fairly worth the said sum of $2,500; that said Frost, though often requested, hath refused to pay said claim or any part thereof, and that no part thereof has been paid, but the whole of said sum of $2,500 still remains due and payable to said plaintiff from said Frost, and for which amount, with interest from the 1st day of March, 1876, the said plaintiff prays for judgment.

W. J. CONNELL,
Plaintiff's Attorney.

UNITED STATES OF AMERICA, }
District of Nebraska, } *ss:*

W. J. Connell, being first duly sworn, says he is attorney herein for said John I. Redick, the plaintiff named in the foregoing petition, who is now absent from said State and district of Nebraska, and in Denver, Colorado, and for which reason affiant makes this affidavit. Affiant further says that he has read said petition and knows the contents thereof and believes the facts stated in said petition to be true.

W. J. CONNELL.

152 Subscribed in my presence and sworn to before me this 26th day of June, 1877.

WATSON B. SMITH, *Clerk.*

EXHIBIT 2.

Copy of Contract.

In consideration of two thousand five hundred dollars as attorney's fee, I agree with Hon. G. W. Frost that I will bring suit and procure, through the courts or otherwise, to him a good title to the premises he, the said Frost, now occupies as his residence in the city of Omaha, and in case of any settlement or arrangement of the suit, then said Frost is to pay in proportion only; and in case said Frost fails to procure said title at all, then the said attorney is to have a mere nominal fee for his services, to wit, $100.

Nov. 11, '70.

(Signed) J. I. REDICK.
GEO. W. FROST.

Said petition is endorsed in words and figures following, to wit U. S. circuit court, district of Nebraska. No. 87, D. John I. Redick *vs.* Geo. W. Frost. Petition. Filed June 26, 1877. Watson B. Smith, clerk. W. J. Connell, plaintiff's attorney.

Mr. Redick, on behalf of complainant Spitly, offered to introduce in evidence so much of the answer of Geo. W. Frost filed in the case of Redick *vs.* Frost, in the circuit court of the United States for the district of Nebraska, July 30, 1877, commencing with the words "by reason of said plaintiff's negligence" and ending with the words "under said decree for the reasons aforesaid;" and, no objection having been made, said portion of answer was received in evidence; which said portion of answer is in words and figures following, to wit:

EXHIBIT 3.

"By reason of said plaintiff's negligence, carelessness, and unskillfulness as aforesaid, he, said defendant, did forfeit and lose all his rights and privileges by virtue of said decree, and the defendant did thereby lose his title to the property in controversy in
153 said suit, and his right to pay said sum of $302.71 and interest, and his right to receive from said Durant or said Burley a good and sufficient deed to said property; and defendant says that he was at all times ready and willing and able to pay said sum of $302.71 and interest, as required by said decree, but that by reason of said advice and negligence, carelessness, and unskillfulness of said plaintiff as aforesaid he lost his right so to pay the same as aforesaid.

"Defendant denies that he has ever received from said Durant or said Burley or any other person or persons any conveyance or deed or title of any kind or nature whatsoever of, in, or to said property, nor has any person for his, defendant's, use or benefit received any deed or title to said property; but defendant avers the fact to be that the title to said property still remains in said Durant, and said defendant has lost all his right to the same under said decree for the reasons aforesaid."

Upon the back of said answer appear endorsements in words and figures following, to wit: U. S. circuit court, district of Nebraska. No. 87, D. John I. Redick *vs.* George W. Frost. Answer. Filed July 30th, 1877. Watson B. Smith, clerk. J. L. Webster and R. E. Gaylord, def't's att'ys.

Mr. Redick, on behalf of complainant, offers to introduce in evidence the affidavit for attachment filed in the circuit court of the United States for the district of Nebraska July 30, 1877, in the case of Redick *vs.* Frost. No objections having been made, said affidavit was received in evidence, and is in words and figures following, to wit:

EXHIBIT 4.

Affidavit for Attachment.

In the Circuit Court of the United States for the Eighth Judicial District of Nebraska.

JOHN I. REDICK, Pl'ff, *vs.* GEORGE W. FROST, Def't.

STATE AND DISTRICT OF NEBRASKA, *ss:*

154 John I. Redick, being first duly sworn, says he is the plaintiff named in the above-entitled action, which said action was commenced by said plaintiff against said defendant above named in said United States circuit court for the district of Nebraska to recover from the said defendant the sum of $2,500 and interest from March 1st, 1876, now due and payable to the said plaintiff from the said defendant in a certain contract in writing for the payment of said sum by said defendant to said plaintiff for certain legal services duly rendered and performed by said plaintiff for said defendant at his special instance and request, as will more fully and at large appear by a copy of said contract attached to plaintiff's petition filed herein, as well also as by the allegations in said petition contained.

Affiant further says that his said claim of $2,500 and interest from March 1st, 1876, against said defendant is just, and that the nature thereof is as above stated, and that said sum of $2,500 and interest from the 1st day of March, 1876, is the amount which affiant believes he, the said plaintiff, ought to recover thereon.

Affiant further says that said defendant is about to convert a part of his property into money for the purpose of placing it beyond the reach of his creditors. Affiant further says that said defendant has property & rights of action which he conceals.

Affiant further says that he has good reason to and does believe that George P. Bemis, a person residing and living within Douglas county, in said State and district of Nebraska, has property of the said defendant in his possession, to wit, moneys in a sum to affiant unknown, parlor furniture, carriage, one cow, and other personal property which affiant is unable to describe; and further affiant saith not.

JOHN I. REDICK.

Subscribed in my presence and sworn to before me this 28th day of July, 1877.

WATSON B. SMITH, *Clerk.*

155 Upon the back of said affidavit for attachment appear endorsements in words and figures following, to wit: U. S. circuit court, district of Nebraska. No. 87, D. John I. Redick *vs.* George W. Frost. Affidavit for attachment. Filed July 30, 1877. Watson B. Smith, clerk.

It is admitted, by counsel for the respective parties herein, that in the attachment suit of Redick against Frost, in the United States

circuit court, that John I. Redick recovered a judgment against said George W. Frost, dated March 14, 1878, for $2,388.85, being the amount of his claim less the amount of $302.71, with interest from 1869, together with his costs, and that an order of sale of the property attached herein and execution issue at the expiration of forty-two days from this day.

Mr. Redick, on behalf of complainant Spitley, offered to introduce in evidence the motion to set aside sale made by Mr. Frost and filed in the case of Redick *vs.* Frost, in the United States circuit court for the district of Nebraska, Sept. 10, 1878. No objections having been made, said motion was received; which said motion is in words and figures following, to wit:

EXHIBIT 5.

In the Circuit Court of the United States, District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

Now comes the defendant and moves the court to set aside the sale of the real estate made herein for the reasons following:

I. That it appears from said appraisement and returns that defendant had no interest in said lands subject to such sale.

II. That said appraisement was not made as required by law.

156 III. That the appraisers, in arriving at the value of defendant's interest in said lands, deducted from said interest outstanding titles as well as liens upon said lands.

IV. That said lands constituted the homestead of defendant and are not liable to sale.

V. That the order was to sell said lands, and the officer only sold an interest in said lands.

E. WAKELY AND
JNO. L. WEBSTER,
Att'ys for Defendant.

Upon the back of said motion to set aside sale appear endorsements in words and figures following, to wit: U. S. circuit court, district of Nebraska. No. 87, D. Redick *vs.* Frost. Motion to set aside sale. Filed Sept. 10, 1878. Watson B. Smith, clerk. Wakely and Webster, att'ys.

Mr. Redick, on behalf of complainant Spitley, asked leave to file with the master the motion for a new trial in the case of Redick *vs.* Frost, in the United States circuit court for the district of Nebraska. No objections having been made, — give notice that he will offer it to be introduced in evidence. Allowed.

Mr. Redick, on behalf of complainant Spitley, offered to introduce in evidence the motion for stay of execution filed by att'y for Mr. Frost in the case of Redick *vs.* Frost, in the United States circuit court, district of Nebraska, March 14, 1878. Ruled out by the master as immaterial; but, on motion of counsel for complainant, it was received for the purpose of showing the proceedings in the case of Frost *vs.* Redick, in the circuit court of the United States for the dis-

trict of Nebraska. Said motion for stay of execution is in words and figures following, to wit:

157 EXHIBIT 6.

In the Circuit Court of the United States, District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

Now comes George W. Frost, defendant, by Jno. L. Webster, his att'y, and moves the court for an order staying execution herein for the period of 42 days, to permit this defendant to file a petition herein for a new trial.

JNO. L. WEBSTER,
Att'y for Defendant.

Upon the back of said motion for stay of execution appear endorsements in words and figures following, to wit: U. S. circuit court, district of Nebraska. No. 87, D. John I. Redick *vs.* G. W. Frost. Motion for stay of execution. Filed March 14, 1878. Watson B. Smith, clerk. Jno. L. Webster.

Mr. Redick, on behalf of complainant Spitley, offered to introduce in evidence the proceedings taken before Watson B. Smith, in the shape of depositions, at the instance of respondent, in the case of Redick *vs.* Frost, in the United States circuit court for the district of Nebraska.

Mr. Webster, on behalf of respondent, objects to this testimony being introduced for the reason that the testimony which that purports to be a copy was never used or passed upon by the court, nor does it show that it ever was filed in the case, and therefore is wholly immaterial and incompetent.

Mr. Redick, on behalf of complainant, then offered in evidence the affidavit of Geo. W. Frost, made Feb. 5, 1878, before W. P. Vivion, and another affidavit made by Frost, on the same point,
158 before J. C. Rainsford, Feb. 14, 1878, for the purpose of showing his residence. Said affidavits are, respectively, in words and figures following, to wit:

EXHIBIT X 1.

TERRITORY OF MONTANA, }
County of Gallatin, } *ss*:

George W. Frost, being first duly sworn, deposes and says that he is over the age of twenty-one years and is now a resident at the Crow agency, in said Territory; that in consequence of important business in an official capacity as Indian agent, he has been necessarily absent from his place of residence for the past ten days, and did not receive the notice to take his deposition in the case of Redick *vs.* Frost, now pending in the U. S. circuit court at Omaha, in the State of Nebraska, until the date of this affidavit; that he will be necessarily absent from his said place of residence for four days

more, and that, [from] the fact that the person to whom the commission was directed to take said deposition is a resident of said Crow Indian agency, it will be impossible for affiant to return to said point and conclude said deposition in time for the February term of said court, 1878; that this affidavit is not made for the purpose of delay or to impede the trial of said cause, but that substantial justice may be done in the premises. Affiant further says that he will use all diligence to have said deposition taken, and will have the same forwarded to said court as soon as completed; and further says not.

GEO. W. FROST.

Subscribed in my presence and sworn to before me this 5th day of February, A. D. 1878.

[NOTARIAL SEAL.] R. P. VIVION,
Notary Public.

TERRITORY OF MONTANA, } ss:
County of Gallatin, }

Personally appeared before me, J. C. Rainsford, a notary public in and for the above-named county and Territory, on this 14th day of February, A. D. 1878, George W. Frost, who, being first
159 duly sworn, deposes and says that he is defendant in a certain action now pending in the U. S. district court in and for the county of Douglas and State of Nebraska, known on the calendar of said court as Redick *vs.* Frost; that a certain commission issued by the aforesaid court was directed to him at his present residence, Crow agency, Montana Territory, where he is employed as U. S. Indian agent for the Crow Indians, Montana, for the purpose of taking his testimony in reply to certain interrogatories relating to said cause, under the commission above mentioned, before J. C. Rainsford, a notary public, of Montana Territory, empowered by the commission aforesaid for that purpose; that he was unavoidably absent on official business at Helena, M. T., at the time the commission hereinbefore mentioned arrived at his said residence, and for several days after the date mentioned therein, to wit, the 8th day of February, 1878, and that it was impossible for him to have appeared before the said notary until after the said date.

GEO. W. FROST.

Subscribed and sworn to before me the day and year first above written.

[SEAL.] J. C. RAINSFORD,
Notary Public.

Upon the back of said affidavit appear endorsements in words and figures following, to wit: 87, D. Redick *vs.* Frost. Affidavit of def't. Filed March 7, 1878. Watson B. Smith, clerk.

Mr. Redick, on behalf of complainant, offers in evidence the appraisement made by the U. S. marshal and filed Aug. 2, 1877, which said appraisement is in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 31st day of July, 1877, I received this attachment, and on the 31st day of July, 1877, I served the same by attaching the following goods, chattels, and effects of the within-named defendant, to wit: 1 carriage, 1 green rep parlor set furniture, 1 green velvet parlor set furniture, 1 bed-room set furniture; also lots 3 and 4, in block 52, city of Omaha, Douglas county, 160 Nebraska. I left with the occupant of said lots a certified copy of this attachment with all the endorsements thereon. All the above and foregoing proceedings were in the county of Douglas, State and district of Nebraska. The appraisement and inventory of said goods, chattels, and effects is herewith returned.

WM. DAILY, *U. S. Marshal,*
By ELLIS L. BIERBOWER, *Deputy.*

Marshal's costs 7.00; 2.00 paid by pl'ff to appraisers.

EXHIBIT X 2.

DISTRICT OF NEBRASKA, *ss:*

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The President of the United States of America to the marshal of the district of Nebraska, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the above-named defendant in your district not exempt by law from being applied to the payment of the above-named plaintiff's claim, or so much thereof as will satisfy the said plaintiff's claim for twenty-five hundred dollars, and fifty dollars, the probable costs of this action. You will make due return of this order on the 18th day of August, A. D. 1877.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, this 30th day of July, A. D. 1877, and in the 102nd year of the Independence of the United States of America.

[SEAL.] WATSON B. SMITH, *Clerk.*

Upon the back of said attachment appear endorsements in words and figures following, to wit: 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost Attachment. Filed Aug. 2, 1877. Watson B. Smith, clerk. W. J. Connell, plaintiff's attorney.

161 EXHIBIT X 3.

Appraisement and Inventory.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and S. A. Orchard and Martin Dunham, two [dis]interested residents of Douglas county, State and district of Nebraska, the said residents being duly sworn by said marshal to make a true and impartial appraisement and inventory of the following property levied upon and taken by virtue of an attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise and inventory said property at its real value in money, to wit:

1 carriage	$250 00
1 green rep parlor set	80 00
1 green velvet parlor set	80 00
1 bed-room set	50 00
Lots 3 and 4, in block 52, city of Omaha, Douglas Co., Neb.:	
Lot 3	2,000 00
Lot 4	4,000 00
Total	$6,460 00

Given under our hands this 31st day of July, 1877.

WILLIAM DAILY,
Marshal of the U. S. for the District of Nebraska,
By ELLIS L. BIERBOWER, *Deputy.*
S. A. ORCHARD.
M. DUNHAM.

Upon the back of said appraisement and inventory appear endorsements in words and figures following, to wit: No. 87, D.
162 In the circuit court of the U. S., district of Nebraska. John I. Redick *vs.* George W. Frost. Appraisement, &c. Filed Aug. 2, 1877. Watson B. Smith, clerk.

Mr. Redick, on behalf of complainant, then offered in evidence the appraisement made by the U. S. marshal and filed July 20th, 1878.

EXHIBIT X 4.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

To the county clerk, clerk of the district court, and county treasurer of Douglas county, Nebraska.

SIRS: Will you please certify under your hands and official seals the amount and character of all liens existing against the lands and tenements hereinafter given and ordered to be sold by virtue of an order of sale and attachment issued out of the circuit court of the United States for the district of Nebraska, and which are prior to the lien of said attachment, as the said liens appear of record in your office? The date of said attachment is July 20th, 1877, and the lands and tenements are as follows, to wit: Lots three (3) and four (4), in block 52, city of Omaha, Douglas county, Nebraska.

Respectfully, &c.,

WILLIAM DAILY, *U. S. Marshal*,
By ELLIS L. BIERBOWER, *Deputy*.

EXHIBIT 5.

STATE OF NEBRASKA, } *ss:*
Douglas County, }

To William Daily, U. S. marshal:

I, Wm. H. Ijams, clerk of the district court of said county, in compliance with the annexed application, do hereby certify that there are the following judgments of record in my office, which are liens upon the lands described in said application prior to the judgment of John I. Redick, plaintiff, *vs.* George W. Frost, defend-
163 ant: In an action in said court between George W. Frost, plaintiff, and the Union Pacific Railroad Company and others, defendants, adjudicated at the February term of said court, to wit, on the 28th day of March, 1876, it was decreed that the plaintiff deposit with the clerk $302.71, with interest from May 31, 1869, and upon his doing so Thomas C. Durant was to convey the property by you described to the said Geo. W. Frost. No part of said amount has been deposited, and an action in ejectment has been commenced in said court by the said Thomas C. Durant against the said Geo. W. Frost based upon said decree.

Witness my hand and official seal this 19th day of July, A. D. 1878.

[SEAL.] W. H. IJAMS, *Clerk*.

Clerk's fees, $2.00. Paid by marshal.

William Daily, U. S. marshal:

In compliance with your application I hereby certify that no incumbrances appear against lots three (3) and four (4), in block fifty-two (52), in the city of Omaha, prior to July 30th, A. D. 1878, as shown by numerical index books.

In testimony whereof I have hereunto set my hand and official seal this 17th day of July, A. D. 1878.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

Fees $2.00. Paid.

EXHIBIT X 6.

Wm. F. Heins, treasurer.

The following is a statement of county and city tax against lots 3 and 4, block 52, city of Omaha:

1877:

Lot 3. Now delinquent, $19.00.
Lot 4. do. 44.00.

1873:

Lot 3. Sold to Thomas Bryant Sept. 9, 1874, for Co. & city tax, $76.46, who also paid 1876 Co. & city tax July 3, 1877, $46.73; the 1874 Co. & city tax June 4, 1875, $61.09; the 1875 Co. & city tax July 10, 1876, $66.00.

Total amount to redeem to date of deed, now due, $137.62.

Subsequent payments, without interest, $173.82.

164 No. 4. Sold to Thomas Bryant Sept. 9, 1874, for Co. & city tax, $177.44, who also paid 1876 Co. & city tax July 31, 1877, $109.03; the 1874 Co. & city tax June 4, 1875, $134.39; the 1875 Co. & city tax April 29, 1876, $151.72.

Total amount to redeem to date of deed, now due, $319.39. Subsequent payments, without interest, $395.14.

1872:

No. 3. Sold to Thos. Bryant Dec. 15, 1873, for Co. & city tax for $62.80; deed issued Dec. 20, 1875.

No. 4. Sold to Thomas Bryant Sept. 3, 1873, for Co. & city tax for $172.58; deed issued Sept. 13, 1875.

Amount to redeem to date when deed was due, $423.70.

1871:

No. 3. Tax paid by Thomas Bryant, holder [of] tax title, Nov. 15, 1876, without interest to date, $56.75.

No. 4. Sold to Emily Satterthwait Dec. 23, 1875, for Co. tax, $156.03, and deed issued Jan. 22, 1878.

1870:

3 [and] 4. P'd by Thos. Bryant Nov. 16, 1876, without interest to date, $278.91.

1869.—3 and 4. Paid by Thos. Bryant Nov. 16, '76, $295.78.
1868.—3 and 4. do. do. do. 102.70.
1867.—3 and 4. do. do. do. 181.90.

WM. H. HEINS, *Treasurer.*

EXHIBIT No. 7.

Appraisement.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States
165 for the district of Nebraska, by Ellis L. Bierbower, deputy, and John Campbell and John B. Furay, two disinterested freeholders, residents of Douglas county, State and district of Nebraska, the said freeholders being duly sworn by said marshal to make a true and impartial appraisement of the defendant's interest in the following property ordered to be sold by virtue of an order for sale on attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise said property at its real value in money, after deducting all prior liens thereon, to wit:

Omaha, Douglas county, Nebraska:

Lot 3, in block 52	50 00
" 4, " "	450 00
Total	500 00

(The said defendant's only interest in said property, as appears by the records of Douglas county, Neb., being that of occupancy and possession, we appraise the said interest as above.)

Given under our hands this 20th day of July, 1878.

WILLIAM DAILY,
Marshal of the U. S. for the District of Nebr.,
By ELLIS L. BIERBOWER, *Deputy.*
JOHN CAMPBELL.
JOHN B. FURAY.

Upon the back of said appraisement appear endorsements in words and figures following, to wit: No. 87, D. Circuit court U. S., district of Nebraska. John I. Redick *vs.* George W. Frost. Appraisement. Filed July 20, 1878. Watson B. Smith, clerk.

166 Mr. Redick, on behalf of complainant, offers in evidence the marshal's deed to John I. Redick, dated April 3, 1879, to which Mr. Webster, on behalf of defendant, objects, for the reason that under the testimony here there is nothing to show any authority for the sale of this land or the execution of this deed. Objection overruled. Exceptions taken. Said marshal's deed is hereto attached and marked Exhibit A.

Mr. Redick, on behalf of complainant Spitley, offered in evidence the warranty deed from John I. Redick and wife to Martin Spitly; said warranty deed is hereto attached and marked Exhibit "B."

EXHIBIT "B."

Warranty Deed.

Know all men by these presents that we, John I. Redick and Mary E. Redick, his wife, in consideration of twenty-eight hundred dollars in hand paid, do hereby grant, bargain, sell, convey, and confirm unto Martin Spitly the following described real estate, situate in the county of Douglas and State of Nebraska, to wit, lots number three and four, in block number fifty-two, in the city of Omaha, together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, title, dower, claim, or demand whatsoever of the said John I. Redick and Mary E. Redick, his wife, of, in, or to the same or any part thereof:

To have and to hold the above-described premises, with the appurtenances, unto the said Martin Spitly, and to his heirs and assigns, forever; and we, the said John I. Redick and Mary E. Redick, for ourselves, and for our heirs, executors, and administrators, do covenant with the said Martin Spitly, and with his heirs and assigns, that we are lawfully seized of said premises; that they are free from incumbrances; that we have good right and lawful authority to sell the same, and that we will, and our heirs, executors, and administrators shall, warrant and defend the same unto the said Martin Spitly, and his heirs and assigns, forever, against the lawful claims of all persons whomsoever claiming by, through, or under us, and subject for all claims for taxes.

167 In witness whereof we have hereunto set our hands this 9th day of September, A. D. one thousand eight hundred and eighty.

JOHN I. REDICK.
MARY E. REDICK.

In presence of—
JAMES F. MORTON.

THE STATE OF NEBRASKA, } ss:
Douglas County. }

On this 9th day of September, A. D. 1880, before me, a notary public in and for said county, personally came the above-named John I. Redick and Mary E. Redick, his wife, who are personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and they acknowledged the instrument to be their voluntary act and deed.

Witness my hand and notarial seal the date aforesaid.

[SEAL.] JAMES F. MORTON,
Notary Public.

Upon the back of said deed appear the endorsements following, to wit: Warranty deed from John I. Redick and wife to Martin Spitly. Exhibit B. Entered in numerical index of deeds March 8th, 1881. John B. Manchester, county clerk, by H. T. Levitt, deputy. Received this 8th day of March, 1881, at 3½ o'clock p. m., and

recorded in book 34 of deeds, at page 478. John R. Manchester, county clerk, Douglas county, Nebraska.

EXHIBIT "A."

Know all men by these presents that whereas, at the November A. D. 1877, adjourned term of the United States circuit court within and for the district of Nebraska, on the 14th day of March, A. D. 1878, John I. Redick, plaintiff, recovered a judgment against George W. Frost, defendant, for the sum of twenty-three hundred and eighty-eight dollars and eighty-five cents and costs of suit; and

Whereas by virtue of an order of sale issued by order of said court and under the seal thereof, bearing date the first day of July, A. D. 1878, and directed to the United States marshal for the district of Nebraska, commanding him to cause to be sold the property attached in said action of George W. Frost, defendant, to wit, lots three
168 (3) and four (4), in block fifty-two, city of Omaha, Douglas county, Nebraska, to satisfy the said John I. Redick, plaintiff, his judgment and costs as aforesaid, together with interest on said judgment from the 14th day of March, A. D. 1878, and all accruing costs; and

Whereas the said marshal as aforesaid, under and by virtue of said order of sale, did, on the 24th day of August, A. D. 1878, at the north door of the United States court-house, in the city of Omaha, Douglas county, in said district of Nebraska (that being the place where the last term of the said United States circuit court was held, having first summoned two disinterested freeholders, residents of said district, and having administered to them an oath impartially to appraise the said defendant's interest in said lands and tenements, and the said marshal, together with said freeholders, having made an appraisement in writing of said lands and tenements, and having first given due and legal notice of the time and place of said sale, for not less than thirty days prior thereto, in the Omaha Bee, a newspaper printed in and in general circulation in said district of Nebraska), did sell the said lands and tenements at public auction to John I. Redick for the sum of three hundred and fifty dollars, he being the highest bidder therefor, and said last-mentioned sum being not less than two-thirds of the appraised value thereof, which sale was afterwards, at the January term of said United States circuit court, A. D. 1879, holden at the city of Lincoln, on the 7th day of January, A. D. 1879, examined and confirmed by the said court, and the said William Daily, United States marshal for the district of Nebraska, ordered by the said court to make a deed of the said lands and tenements to the said John I. Redick:

Now, therefore, I, the said William Daily, United States marshal for the district of Nebraska, as aforesaid, in consideration of the premises and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said John I. Redick, his heirs and assigns, all the estate, right, title, and interest in and to the lands and
169 tenements sold as aforesaid of which the said George W. Frost, defendant, was seized and possessed on the 30th day of

July, A. D. 1877, or at any time thereafter, to wit, lots three (3) and four (4), in block fifty-two (52), city of Omaha, Douglas county, Nebraska, with all the appurtenances thereto belonging; to have and to hold the same to the said John I. Redick, his heirs and assigns, and their use and behoof, forever.

In testimony whereof I have, as such marshal, hereunto set my hand this fifth day of February, A. D. 1879.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska.

Signed, sealed, and delivered in presence of—
ELLIS L. BIERBOWER.

The erasure of the second line and two words in third line of this page of this deed was made before signing and acknowledging the deed.

STATE AND DISTRICT OF NEBRASKA, *ss:*

On this fifth day of February, A. D. 1879, before me, Watson B. Smith, clerk of the U. S. circuit court, district of Nebraska, personally appeared William Daily, marshal of the United States for said district of Nebraska, to me well known to be the identical person described in and who executed the foregoing instrument of conveyance, and who acknowledged said instrument to be his voluntary act and deed as said marshal, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this fifth day of February, A. D. 1879.

[SEAL.] WATSON B. SMITH,
Clerk United States Circuit Court, District of Nebraska.

Upon the back of said deed appear endorsements in words and figures following, to wit: Ex. A. Deed. William Daily, U. S. marshal, district of Nebraska, to John I. Redick. Entered in numerical index of deeds April 30th, 1879. John R. Manchester, county clerk. Received for record April 30th, 1879, at 11½ o'clock p. m., and recorded in book 27 of deeds, at page 353. John R. Manchester, county clerk, Douglas county, Nebraska.

170 Counsel for complainant, John I. Redick, and counsel for defendant, J. L. Webster, stipulate that the following is substantially a copy of the decree rendered in the State court in the case of George W. Frost *vs.* Thomas C. Durant and others:

"That the plaintiff deposit with the clerk, within thirty days after the rising of the court, the sum of $302.11, with interest from May 31st, 1869, and upon his doing so said Thomas C. Durant was to convey the said property to said George W. Frost."

And defendant, George W. Frost, offers to show that prior to the making of the deed by Redick to Martin Spitly, and along about the month of July, 1880, that John I. Redick commenced suit in

his own name as plaintiff in the justice court for forcible detainer against Frost, claiming title and right of possession to said property by virtue of his purchase at the marshal sale in the case of Redick *vs.* Frost, pending in the United States circuit court, and that said suit for forcible detainer is now pending in the State district court upon a petition in error filed by defendant Frost. That said Redick obtained judgment in the justice court is admitted to be true.

Objected to by complainant as immaterial.

In support of the answer to complainant's bill, Mr. Webster offers in evidence two affidavits in case of Redick *vs.* Frost, No. 87, D, being affidavits for continuance filed, one filed Nov. 15, 1877, and the other filed Feb. 21, 1878.

Complainant Spitly objects on the ground that the same are immaterial, irrelevant, and incompetent. All the questions involved in them have been adjudicated by this court.

Said affidavits were admitted in evidence, and are, respectively, in words and figures following, to wit:

171 EXHIBIT A 1.

Affidavit for Continuance.

DISTRICT OF NEBRASKA, *ss:*

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK, Pl'ff, *vs.* GEORGE W. FROST, Def't.

J. L. Webster, being first duly sworn, deposes and says that he is attorney for the defendant in the above-entitled cause; that said defendant is now at Crow agency, Montana, as United States Indian agent; that this suit was commenced and service had upon defendant just on the eve of his departure from Omaha for said agency and some time before the answer day in said cause.

That said defendant, as affiant was informed by him, was compelled to leave Omaha for said agency almost immediately after the service of summons upon him in this case under his orders from the Commissioner of Indian affairs in order to reach said agency in time to enter upon his duties as such agent under his instructions from said Commissioner and as an officer of the Government; that defendant was unable to remain in Omaha or to defer his departure for said agency a sufficient time for the preparing of his answer herein, or the taking of his deposition, as he informed affiant and as affiant believes, and that this is the reason why his deposition was not taken before his said departure; that defendant said to affiant when he took his departure that he expected to be back to Omaha in time to attend to his case in this court, which is a further reason why his deposition was not taken before his departure, even had there been time to take the same; that affiant received a letter from said Frost about the 13th day of September last, and which letter bears date Aug 28, in which Frost says: "I cannot be back in Omaha in Oct. unless my health is better than it is now. My long travelling,

more than a thousand miles over the terrible roads, has
172 brought on my old spinal complaint, which laid me up for four years, and I can bring affidavit from the best physicians here that it would be unsafe and positively dangerous for me to attempt to make a trip again to the States this autumn. I fully intended to come back, but find I cannot. I believe testimony must be taken at Bozeman or Helena. I can take testimony here, but not in my own case. The public business in these times is so pressing in consequence of Indian troubles that I cannot leave the reservation in time to have it taken in Bozeman. I have called in all the Indians and it will hold me here until at least the 25th of Sept., and perhaps longer, to distribute the annuities. Besides, it is 115 miles to Bozeman, over a worse road than you ever dreamed of, and I cannot with safety ride that distance and back to my work. We have rapid streams to ford over, hugh boulders and holes and gullies to drive through, that would make a well man sick."

Affiant says that he felt it best to take some further steps towards getting the testimony of said Frost, and did, on Sept. 15th, write said Frost in relation thereto, urging the necessity of having his testimony, and said, among other things: "I do, however, want you to do this—if you find you can go to Bozeman or anywhere else where your deposition can be taken, let me know the fact by telegram; also the name of some one to take depositions, so that I can serve the notice and take active steps." I also asked him to send me statement of facts and certificate of his physical condition. On October 26th I received a telegram as follows:

CROW AGENCY, MONT., 13, '77. OMAHA, *Oct. 26th*—10.55 a. m.

To J. L. Webster:

Letters delayed; cannot make affidavit; no notary within hundred miles; have written George W. Frost by mail to Virginia City, Mont., Oct. 26.

Affiant further says that said Frost is a material witness in this cause, and that it cannot be tried without the testimony of said
173 Frost; that said Frost would swear, if present or by deposition, as affiant is informed and believes, that under the decree as finally rendered in the district court of Douglas county, set out in the petition in this action, said Frost should have given a bond conditioned for the payment of $302.71 and interest, within thirty days after the adjournment of that term of said court, in order to preserve his rights under said decree; that said Redick, as Frost's attorney in that action, advised him that a bond such as given in cases appealable to the Supreme Court was all that was necessary; that said money need not be paid till 30 days after the time allowed for an appeal; that Frost was at all times ready to give the bond required, but under the said advice of Redick he gave only the usual appeal bond, and by so doing lost his rights under said decree, lost his title to the property then in controversy, and his right under the decree to receive a deed therefor; that he was at

all times ready to pay said $302.71 and interest, but did not pay it in time to save his rights under said decree, because of the said advice of this plaintiff; that Redick refused to loan him said sum only on condition that he would execute to him, Redick, a mortgage on said property for $3,500; that he, Frost, refused to *refuse* said sum on such terms.

That he has never received from any one any deed or title of any kind to property, nor has — one for him or for his use, but that the title to said property is still in Durant, and he, Frost, lost all his right to a deed to the same through the negligence of said Redick; that Redick was further negligent, careless, and unfaithful in the conduct of said suit for him in neglecting to claim, as against the said Credit Mobilier, a def't therein, the sum of $500, charged to Frost by the Credit Mobilier, for certain material furnished to Frost by it, but afterwards used by it for other purposes and not credited to Frost, as should have been done; that he frequently called Redick's attention to this claim and urged him to set it out in the petition, but Redick wholly failed to do it, though he promised that he would, and that thereby he, Frost, was deprived of his rights in that regard against said defendant in that suit.

174 That said Redick also failed in his duty to said Frost in that he failed to amend the petition therein so as to claim for said Frost the sum of $2,000 annually for the care of guests of defendants in that suit, instead of $2,000 for the whole sum; that Redick frequently told him he would attend to it, and that he had done so, when, in fact, he merely inserted the words "per annum" in pencil after the petition had been verified and filed, so that Frost was deprived of his rights against the defendants in that suit in a large sum of money; that he, Frost, agreed to pay said Redick said sum of $2,500 for his services in that suit only on condition that he, Redick, should secure for him a good and perfect title to the property then in controversy, but that he wholly failed to secure such title or any title, and that by reason of Redick's carelessness, unskillfulness, negligence, and unfaithfulness he lost all his right to a title to said property, and said suit wholly failed in any benefit to him, said Frost; that defendant has no other witness by whom he can prove the above facts. Affiant means by the foregoing affidavit that said Frost informed affiant and affiant believes that said Frost will swear to all the foregoing facts.

J. L. WEBSTER.

Subscribed in my presence and sworn to before me this 15th day of November, A. D. 1877.

WATSON B. SMITH, *Clerk.*

On the back of said affidavit appear endorsements in words and figures following, to wit: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* George W. Frost. Affidavit for continuance. Filed Nov. 15, 1877. Watson B. Smith, clerk. Webster and Gaylord, atty's for defendant.

EXHIBIT B 1.

BOZEMAN, M. T., *Feb. 5th*, 1878.

Hon. J. L. Webster.

DEAR SIR: Yours received. I have been absent from home ten days and had my mail held at Bozeman. I shall have
175 to go to the agency, which will take at least four days, and should storms come it will take twice that time, as the snow fills the mountain ranges so that it is impossible to travel at all. It will take three or four days to take the deposition, as the notary has other business, so that he cannot take the time at once to take it. It then requires at least 17 days for a letter to go from the agency by mail. If mine go in less time, at any time, it is because they are sent by carrier. At this time of the year the mail is liable to be detained a week, both between Bozeman and the agency and between Bozeman and the railroad. This is of common occurrence in Feb. and March in this mountain region. Had I been at home I could, with the fine weather that we have had, got the papers to you in season, but now I am doubtful, and so send the affidavit. We have had a snow storm to-day on the range, but I don't know how much has fallen. If you find that you cannot make the affidavit do, telegraph me and I will send a carrier; but then, unless there is a long term, I fear it will not reach you; will attend to Ituer and send him the money; will write when I get home. You say nothing about the Hanscom case.

Yours truly, G. W. FROST.

EXHIBIT "C."

In United States Circuit Court, District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST *et al.*

John L. Webster, being first duly sworn, deposes and says that he is one of the attorneys for the defendants in the above-entitled cause; that immediately after the order of this court, at its last regular term, ordering this cause to stand continued to this adjourned term, this affiant did write a letter to the defendant, George W. Frost, at Crow agency, Montana, where defendant temporarily resided, informing him of the said order of the
176 court and requesting that he, said Frost, do at once forward the affiant the name of some person before whom his deposition could be taken, naming the time and place; that in due course of mail, and about the — day of January, 1878, this affiant received an answer to said letter and from said Frost, giving the name of an officer before whom his deposition could be taken; that thereupon affiant caused notices to be served upon said plaintiff that he would take the deposition of said Frost on the 8th day of February, 1878, at Crow agency, Montana, and enclosed the original of said notice to said Frost by mail; that in response to such notice this affiant has just received by mail from Bozeman,

Montana, the attached letter and affidavit, which affiant asks may be considered as part of this application for continuance.

Affiant says that all due speed has been made in this matter as was possible, owing to the great length of time necessary for mail matter to go to and from Crow agency and Omaha. Affiant further saith that said deposition will, as he believes, reach Omaha in time for the trial of this case at the next regular term, and that affiant says that he cannot try said cause with justice to the defendant without his testimony. Affiant further refers to the former affidavit of himself, on file in this cause, as to what said Frost will testify to and as to the material of such testimony, and asks that said affidavit be considered as a part of this application for continuance.

JNO. L. WEBSTER.

Sworn to before me and subscribed in my presence this 21st day of February, 1878.

WATSON B. SMITH, *Clerk.*

Upon the back of said affidavit appear the endorsements in words and figures following, to wit: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* Geo. W. Frost. Affidavit for continuance. Filed Feb'y 21, 1878. Watson B. Smith, clerk. Jno. L. Webster and Ralph E. Gaylord.

177 GEORGE W. FROST, a witness on behalf of defendant, being first duly sworn, was examined in chief by Mr. WEBSTER, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. George W. Frost; age, fifty-six; reside in Omaha; I have none just now; editor and correspondent.

Int. 2. Are you the respondent in this suit?

Ans. I am.

Int. 3. Mr. Frost, do you know the lot in controversy?

Ans. I do.

Int. 4. How long have you been occupying these lots as your home?

Ans. Since about the 15th day of October, 1866.

Int. 5. Are you a man of family?

Ans. I am.

Complainant objects to the answer on the ground that the same is immaterial. Overruled. Exceptions taken.

Int. 6. And of whom does your family consist?

Objected to by Mr. Redick, on behalf of complainant Spitly, as immaterial, the same having been before adjudicated. Overruled. Exceptions taken.

Ans. My family at present consists of myself, my wife, and her daughter.

Int. 7. Are they now living with you upon this property?

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. They are.

Int. 8. Of whom did your family consist at the time of the commencement of this suit?

To which complainant objects, for the reason that the same has been adjudicated in the case of Redick *vs.* Frost in June, 1877. Overruled. Exceptions taken.

178 Ans. The same.

Int. 9. You may state, Mr. Frost, if, since June, 1877, you have been absent during any part of that time.

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. I have been frequently absent on visiting excursions, perhaps two or three months at [a] time; I have never been absent except one year and a half as Indian agent.

Int. 10. When did you leave for Montana and that agency?

Ans. I think the first of July or the last days of June, 1877.

Int 11. For what purpose did you then go to Montana?

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. For the purpose of holding an Indian agency—Crow Indian agency.

Int. 12. Did you receive that appointment as agent prior to your leaving for Montana?

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. I did.

Int. 13. When you left Omaha for Montana did you go for any other purpose except your official duties?

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. I did not.

Int. 14. At the time of such departure from Omaha, on such official business, what was your purpose as to your residence?

Objected to by complainant as immaterial, incompetent, the same having been adjudicated by this court. Overruled. Exceptions taken.

179 Ans. My residence was Omaha. I had no intention of changing my residence, and I refused to go until I consulted counsel upon that subject.

And here complainant objects to witness stating what he said or done, or what consultation he may have had with lawyers or preachers about what to do.

Int. 15. How long did you remain away from the premises on these official duties?

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. Perhaps eighteen or nineteen months. I left there about the middle of December. I must have got home some time about the 1st days of January.

Int. 16. Of what year?

Ans. 1879.

Int. 17. I will ask you whether or no such return was immediately upon the close of your official duties?

Objected by complainant same as before. Overruled. Exceptions taken.

Ans. Immediately. I only left here with the intention of remaining until my duties were filled.

Int. 18. What did you do, if anything, while in Montana, as to the establishing your residence there?

To which complainant makes same objection as before. Overruled. Exceptions taken.

Ans. Nothing. I refused to vote or do anything towards making my residence there. My residence was here.

Int. 19. I desire to call your attention to an affidavit, made before one J. C. Rainsford, in the Territory of Montana, in which occurs this sentence: "That a certain commission issued by the aforesaid court was directed to him at his present residence, Crow 180 [illegible] agency, Montana Territory, where he is employed as U. S. Indian agent for the Crow Indians of Montana." You may state what you know as to whom the word residence was used and employed in this particular affidavit?

Objected to by complainant for the same reasons above given, and, in addition thereto, it seeks to stultify the witness and make him now swear different from what he swore in that affidavit. Overruled. Exceptions taken.

Ans. It was meant to express my temporary residence; simply my official residence at the Crow agency.

Int. 20. Let me call your attention to another affidavit introduced in evidence in this case purporting to have been made by you before R. P. Vivion, in the Territory of Montana, in which occurs this sentence: "George W. Frost, being duly sworn, deposes and says that he is over the age of 21 years and is now a resident at the Crow agency, in the said Territory." I ask you how the word resident came to be used in that affidavit?

To which complainant makes the same objection as to the preceding question. Overruled. Exceptions taken.

Ans. It was placed there simply as a form used in making up affidavits in that country. I made many that were made just in

that way to show my official residence for the time being. My residence was in Omaha.

Int. 21. When you took your departure from Omaha for Montana, what was your purpose as to returning to Omaha?

To which question complainant objects as immaterial, the same question having been before adjudicated by the court. Overruled. Exceptions taken.

Ans. My purpose was to return in October, or at the end
181 of the year if I could leave; or, if I could not leave, my family was to return and occupy the premises.

Int. 22. Why did you not return in October?

To which the complainant makes the same objection as before, and, further, as immaterial. Overruled. Exceptions taken.

Ans. For the reason that I was notified that a new agent had been appointed, and I staid to settle up the business, which kept me one or two months longer than I expected. One agent that was appointed declined, and it took some time before another agent was appointed and got there.

Int. 23. For what purpose and how came your family to go with you?

Objected to as immaterial, and for the further reason that the same question has been before adjudicated by this court. Overruled. Exceptions taken.

Ans. They went with me for two reasons—first, the health of my daughter; secondly; the missionary society, through whom I received the nomination, requested that a man's family should go with him as temporary residents at the agency; otherwise they would have remained here.

Int. 24. How did you leave the property here upon your departure from Omaha on this official business?

To which complainant makes same objection as before.

Ans. I left all my household furniture, taking but a few things; the family left all their wearing apparel. Nothing is required up there except the plainest possible dresses, and I employed my nephew, George P. Bemis, to take charge of the property, giving him the use of the property for taking care of it without any payment of rent whatever.

Int. 25. Where was your household furniture left?

182 To which question complainant makes the same objection. as before. Overruled. Exceptions taken.

Ans. In my house; some of it in the stable.

Int. 26. How about your carpets—were they taken up and stored away?

To which complainant makes same objection as before. Ruling and exceptions as before.

Ans. All except one—that was taken up because Mr. Bemis pre-

ferred to put down one of his own—were left down on the floor just as we used them.

Int. 27. How about the furniture?

To which question complainant makes same objection as before. Ruling and exceptions as before.

Ans. All left in the house.

Int. 28. State whether, in the occupancy of the house by Bemis, he occupied it and used the furniture like you would have used it had you been at home.

To which complainant makes same objection as before. Ruling and exception as before.

Ans. Yes, sir.

Int. 29. Wearing apparel—was that left in the house?

To which complainant makes same objection as before. Ruling and exceptions as before.

Ans. Yes, sir; think we left one clothes-press shut up with the majority of the wearing apparel in it.

Int. 30. Upon your return to Omaha, did you immediately go into possession of the property?

To which complainant makes same objection as before. Ruling and exceptions same as before.

Ans. Immediately commenced purchasing supplies, and Bemis remained with me until he went away.

183. Int. 31. Have you and the family been occupying the property ever since?

To which question complainant makes the same objection as before. Ruling and exceptions as before.

Ans. Yes, sir; ever since.

Cross-examination by Mr. REDICK:

Int. 32. What made you leave Montana when you did?

Ans. I left because I was through.

Int. 33. How through?

Ans. My work was completed.

Int. 34. Did you leave on your own accord?

Ans. Of course I did.

Int. 35. Did not the Government relieve you as Indian agent?

Ans. Yes, sir.

Int. 36. Did you not protest against leaving?

Ans. Yes, sir, I did; because I was being removed by thieves, and I went to Washington and, I think, proved I was right.

Int. 37. Didn't you protest against being removed?

Ans. Yes.

Int. 38. How long have you been out there?

Ans. I think about eighteen months.

Int. 39. How long did you hold it before you were relieved?

Ans. About a year and one-half.

Int. 40. Did you protest against it then?

Ans. I did not; at last, I wanted to get away.

Int. 41. It ain't a fact, then, that you protested against being relieved then?

Ans. No, sir; I wanted to get away.

Int. 42. When did you commence protesting?

Ans. As soon as they commenced their attacks on me.

Int. 43. When did you quit?

184 Ans. About August.

Int. 44. What year?

Ans. The fall I left there—1878; I think it was in August my last protest was made.

Int. 45. When did the agent that succeeded you take your place?

Ans. I can't remember; I think about the 14th; some time in December; I don't remember the day.

Int. 46. When you went you took your family with you?

Ans. I did.

Int. 47. Then you say you have had occasion to make a good many affidavits before, and they were all like this?

Ans. I didn't say they were my affidavits. I took affidavits of other people. I had a printed form to copy. I had a good many affidavits to make, and I had to get up a printed form.

Int. 48. Was this form printed?

Ans. No, sir; it is written.

Int. 49. So it is what you call a Montana affidavit?

Ans. I can't tell whether it is one or not.

Int. 50. How much were your household goods worth that you went off and left?

Ans. I can't tell.

Int. 51. One hundred dollars?

Ans. Yes, sir.

Int. 52. Two hundred dollars?

Ans. Yes, sir.

Int. 53. Three hundred dollars?

Ans. Yes, sir.

Int. 55. A thousand dollars?

Ans. I can't tell without referring to my book.

Int. 56. What do you want to refer to your books for?

Ans. To find out what they are worth.

185 Int. 57. Where did you buy them?

Ans. Different places—all over the country.

Int. 58. You bought them?

Ans. Some I bought and some my wife bought.

Int. 59. You paid for them?

Ans. She paid for them.

Int. 60. All of them?

Ans. Most of them.

Int. 61. All those in the house now—did she pay for them?

Ans. I can't answer.

Int. 62. Can you name one thing she paid for?

Ans. Yes, sir.

Int. 63. Name one.
Ans. The piano; sets of furniture.
Int. 64. That is in the house now?
Ans. Yes, sir.
Int. 65. What did you pay for; can you name anything you paid for?
Ans. I paid for a great many things.
Int. 66. Can you name one thing?

Objected to as wholly immaterial. Overruled. Exceptions taken.

Ans. I don't know.
Int. 67. Did you leave any horses here?
Ans. I sold them before I left.
Int. 68. Did you leave a carriage here?
Ans. Yes, sir.
Int. 69. Did she purchase that?
Ans. Yes, sir.
Int. 70. Who did she purchase it of?
Ans. I don't know the names of the parties.
186 Int. 71. Did she purchase it herself or did you purchase it?
Ans. She ordered me to purchase it for her.
Int. 72. Who actually paid the money to the man that was actually paid for it?
Ans. He drew on it here.
Int. 73. On whom?
Ans. On me.
Int. 74. You paid the draft?
Ans. Yes, sir.
Int. 75. You won't swear that you left six hundred dollars' worth of property when you left here?
Ans. I think more than that. I could not swear as to the value of the property. I think if I was to swear its cost it would be over fifteen hundred dollars.
Int. 76. You used it over eight years?
Ans. Yes, sir.
Int. 77. Wasn't it worn out?
Ans. No, sir; nothing in my house is worn out to-day.
Int. 78. Have you ever paid any taxes on these lots?

Mr. WEBSTER: I object to this testimony as being improper cross-examination, as I have examined the witness simply as to his residence; secondly, there are no questions between the complainant Spitly and the respondent Frost as to the taxes upon this property. Overruled. Exceptions taken.

Ans. Yes, sir.
Int. 79. For what year?
Ans. I was notified—I don't know—I was notified that taxes were due on that property and that it had been sold. I went to Byron Reed to redeem the property and have it right, and then deposited $500, and Mr. Redick advised me not to pay it. The amount was 55 dollars, I think.

187 Int. 80. With whom did you deposit five hundred dollars?

Ans. My money was deposited in the First National Bank.

Int. 81. You say you deposited the money in the First National?

Ans. I had the money deposited for the purpose of paying these taxes.

Int. 82. In your name?

Ans. Yes, sir; I sold some land for the purpose of getting the money.

Int. 83. Did you say you left the money with Byron Reed?

Ans. I can't tell; I don't remember; it must have been; I don't remember; 1871 or 1872; I don't remember.

Int. 84. Is that all the taxes you ever paid?

Ans. That is all the taxes I ever paid, by the advice of counsel; I was ready to pay the taxes.

Int. 85. After Mr. Redick obtained a decree for you in the district court, in which the court directed you to pay $302 and interest within thirty days from the rising of the court, ain't it a fact that shortly after that you went down to New York?

Ans. I went to New York.

To which question and answer Mr. Webster, on behalf of respondent Frost, makes the following objections: First, it is not proper cross-examination of any matter brought out by the respondent on direct examination; second, it is wholly immaterial; third, because counsel for complainant is seeking now to gather testimony to sustain his bill when he has not introduced a word of proof to sustain his bill. Overruled. Exceptions taken.

Ans. I did.

Int. 86. Did you see Sidney Dillon when you were in New York?

Ans. I did.

Int. 87. Did you see Thomas C. Durant when you were there?

Ans. I did.

Int. 88. How long was it after you obtained a decree in the State court?

188 To which counsel for respondent objects as before. Overruled. Exceptions taken.

Ans. I can only fix the date by the fact that I was notified by some of the best legal counsel in the city that it would be wrong to follow the advice of Redick; that I could pay the money in thirty days or in six months; that it was all wrong. It was about that time; it was when I was notified.

Int. 89. When was that?

Ans. I don't remember; must have been some time in 1876 or 1875; in fact, I don't remember.

Int. 90. Was it in the fall or spring?

Ans. I can't remember whether it was in the fall or spring. I remember I went to New York; I can't remember; I have been so many times.

Int. 91. What did you go to New York for?

Ans. To save my property.

Int. 92. Did you see Dillon?

Ans. Yes.

Int. 93. Did you see Thomas C. Durant?

Ans. Yes.

Int. 94. Did you make arrangements to have deed made?

To which counsel for the respondent makes the same objection as before. Same ruling and exceptions as before.

Ans. I saw Sidney Dillion and told him my property had reverted in consequence of my lawyer. I told him I had come, and wanted to know what I could do about it. He said he could not do anything about it, and he did not know whether I could get a deed or not. He talked the matter over with Durant, and they decided to give the deed of which Mr. Poppleton spoke; same deed, I think; I don't think I saw the deed.

189 Int. 95. It was decided to send the deed to Poppleton—that he talked about?

Ans. Yes, sir.

Int. 96. Did that satisfy you?

To which counsel for the respondent makes the same objection as before. Overruled. Exceptions taken.

Ans. No, sir; I did not feel satisfied; I did not know whether I would be pleased or not; I could not tell. I was satisfied then that I lost my property through my lawyer. I had got to get some other way to get it.

Int. 96. After your deed came here to Poppleton did he speak to you about it?

Ans. I don't remember whether he spoke to me or wrote to me or whether I called on him.

Int. 97. Did he tell you he had a deed in trust for you?

Ans. I think he remarked he had a deed there.

Int. 98. In trust?

Ans. I don't know whether he said in trust or not.

Int. 99. Why didn't you pay the money to him?

Ans. For a very good reason; best in the world.

Int. 100. You didn't have the money?

Ans. That is it; I didn't have it.

Int. 101. How long did you know the deed was there?

Ans. I don't know; I can't remember. I knew it had come on.

Int. 102. You never told me about the deed being there with Poppleton, did you?

Ans. You spoke to me about it; I don't remember, because I had not intended to tell you about it; you had ruined me and I did not care to tell you about it.

Int. 103. You rather like to be ruined that way, don't you?

190 Ans. That depends on circumstances.

Int. 104. Did you not state to Mr. Redick, at his office at the time the decree was obtained, that the Credit Mobilier would never take an appeal because Dillon had told you that whenever a court of record found that the property belonged to you they would

give it to you; that all you wanted to get was a decree; didn't you state that to me in my office?

Ans. Impossible; I could not see Dillon; Dillon always told me he helped his friends, but Dillon had nothing to do with it, at least he stated so to me. Dillon may have said that he did not think the Credit Mobilier would, for he had nothing to do with it at the time of my statement to —, though he said something of the kind.

Int. 105. Was he president of the company at the time you brought this suit?

Ans. I don't know.

Int. 106. Had you not known him a long time before we brought this suit?

Ans. I had known him since 1865.

Int. 107. How long had you known Durant?

Ans. Since 1865.

Int. 108. He was not a personal friend of yours?

Ans. Sometimes I thought he was, and sometimes I thought he was not.

Int. 109. How about Dillon?

Ans. Sometimes I thought he was, sometimes I thought he was not.

Int. 110. Then I understand you to say that you went to New York at the instance of a learned lawyer to see Dillon and Durant to save your property?

Ans. I went at my own request. I was told that my property had reverted to the Credit Mobilier while I was gone; that was the decision of Mr. Poppleton.

Int. 111. Do you claim to own these goods that are in the house now?

191 Ans. I don't.

Int. 112. Do you claim to own any portion or all of the goods you paid for?

Ans. I don't claim any; at the time of her marriage her money purchased the household goods; she had money that was left her by her mother's estate and by her husband's estate; what I bought were bought at her instance and with her money.

Int. 113. Did you leave any other property except household goods?

Ans. I think there was some property there; I don't remember—some blooded stock, I think.

Int. 114. Where were they?

Ans. In Iowa part of the time and here part of the time.

Redirect examination by Mr. WEBSTER:

Int. 115. At the time you went to New York to see Dillon or Durant with reference to getting a deed of this property, let me ask you whether there was any arrangement, agreement, or understanding between you and these parties that you was to get a deed for the purpose of cheating Mr. Redick out of any claim he might have had for legal services?

Objected to by complainant as not proper cross-examination. Overruled. Exceptions taken.

Ans. No; nothing.

Int. 116. Was there anything said in any of these conversations between you and Dillon or Durant or either of them about Mr. Redick having any claim against you for legal services?

Objected to by complainant. Overruled. Exceptions taken.

Ans. Not one word from any person. He had no interest with the Credit Mobilier.

192 Int. 117. Did Sidney Dillon have any knowledge of the existence of Redick at that time?

Ans. I think he did; yes, sir; but that is about all.

To which question and answer complainant makes same objection as before. Overruled. Exceptions taken.

Int. 118. What did Durant know about Redick at that time?

Same objection as before. Overruled. Exceptions taken.

Ans. I don't know what he knew. He didn't speak very favorably of him.

Int. 119. Was there any arrangement, agreement, or conversation between you and Sidney Dillon at that time that the deed spoken of should be made to some other party than yourself for the purpose of protecting this property against the claim of Redick and yourself against your creditors?

Ans. No such arrangement was spoken of for any purpose.

Int. 120. Did he say this deed was to be made?

Ans. He did.

Recross-examination by Mr. REDICK:

Int. 121. Did you say anything to Durant about Redick having a claim against you?

Mr. WEBSTER: I object to this testimony for the reason that counsel has already cross-examined this witness and has said he was through, and I have re-examined; therefore I insist that the examination of this witness is at an end. It is not upon any new matter called out, for the counsel on the other side called up this matter relative to his trip to New York and matter relative to this deed. Sustained. Exceptions taken.

193 O. F. DAVIS, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. WEBSTER, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. O. F. Davis; fifty-four years; reside in Omaha; dealer in real estate.

Int. 2. Are you familiar with the property occupied by George W. Frost in controversy in this suit, being two lots with buildings thereon.

Ans. I am familiar with them lots.

Int. 3. You know there is a house, barn, and outhouses on it, don't you?

Ans. Yes, sir.

Int. 4. In the summer and fall of 1878, what was the value of that property?

Objected to by Mr. Redick on behalf of the complainant as seeking to contradict the sworn statement of the United States marshal and of the appraisers upon whose appraisement the sale was made. Overruled. May be material. Exceptions taken to the ruling.

Ans. That is—the property just as it stands.

Int. 5. Yes, sir; just as it stands; lots, with improvements, and everything.

Ans. I should say about six thousand dollars at that time.

Int. 6. State what is its value at this time.

Objected to as immaterial. Overruled. Exceptions taken.

Ans. About seven thousand dollars.

Cross-examination by Mr. REDICK:

[Q.] When you fix this value on the property you fix it on the theory that the title is free of incumbrance?

Objected to on behalf of defendant by Mr. Webster. Overruled.

Ans. Yes, sir; supposing that the title to the property was clear and perfect.

194 Redirect examination by Mr. WEBSTER:

Int. 8. The value which you gave of the property was the value in your judgment, irrespective of any encumbrance on it?

Ans. Yes, sir; my answer was given upon the theory that the title was perfect in all cases.

A. J. POPPLETON, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Webster, and deposes and says as follows:

Int. 1. I desire to have you state what arrangement or agreement, if any, was made between you, as representing Durant, in the suit of Durant *versus* Frost and others in the State court relative to subrogating Mr. Redick to the rights of Durant in the lots in controversy in this case?

Objected to as immaterial. Overruled. Exceptions taken.

Ans. I did not understand that any arrangement was made between us in that respect after the ejectment suit of Durant *versus* Frost was commenced, and perhaps after Redick claimed to have acquired an interest in the property. Judge Dillon, upon examining the decree in the original case of the Union Pacific Railroad Company *versus* Durant and the Credit Mobilier, advised that the Credit Mobilier, notwithstanding the lapse of time in which Frost was to

pay the amount called for by the decree, should still accept that amount from the clerk of the court, no matter who paid it; whether at Redick's instance or not, I don't recollect; I told him that we would receipt for that money to the clerk, no matter who paid it. As I understand it, he paid the money into court, and I gave him a receipt for it, as attorney for the Credit Mobilier, and that was the end of my relation to the transaction.

195 Int. 2. You may state whether any effort or attempt was made to have you or the Credit Mobilier or Durant accept the money from Redick direct, or in any manner different from the manner in which you did receipt for the money to the clerk.

Ans. My recollection is that Redick offered me the money directly, and I believe that he asked me to receipt to him for it, but when I pointed out the objections on our part to such a course I don't recollect that he made any particular objections to it, but paid the money into court.

Int. 3. What was said, or was anything said, at that time or about that time by which Redick was to acquire the interest of Durant or the Credit Mobilier of America [to] these lots by reason of the payment of the money by him; or, in other words, was there and conversation between you and him in that respect?

To which complainant objects. Overruled. Exceptions taken.

Ans. I cannot recollect any conversation in detail; I know there was some conversation, and I can only recollect in substance what I said in that respect, which was that nothing we could do would either weaken or strengthen his rights in the property.

Int. 4. Whereupon you did nothing then save receipt for this money. Did you know this man Martin—this old Spitly, who is said to live at Lincoln, in the State of Illinois—the German farmer who sued as complainant in this suit?

Ans. I met a man who called himself Martin Spitly, and who dealt with the Union Pacific Railroad Company; he dealt with the company some two or three times—a German somewhat advanced in years; he said he lived in Lincoln, Illinois, and left his address.

Int 5. Did you know of his claiming to own some land in Colfax county, about Richland?

196 Ans. I only knew it in this way—think he asked the railroad company to make a side track out somewhere for something he did for them.

Int. 6. Do you know anything about his financial condition?

Ans. I do not.

Int. 7. Do you know about his business—has he any left?

Ans. I don't know. He impressed me as a man who would be good for what he said, whether much or little.

Cross-examination by Mr. REDICK:

Int. 8. Did not Judge Dillon advise you as chief counselor for the railroad company—the Credit Mobilier I don't know—in looking over the papers in the suit which you brought for the Credit Mobilier against Frost and others, that legally and technically the claim

held against Frost in that decree was nothing more than a charge on the lots, and that your lapse could not be maintained? What was said in that regard?

Objected to. Overruled. Exceptions taken.

Ans. Judge Dillon said this: That it seemed to him that that decree did not bar the interest of Frost in the premises upon a tender of the money, but that it would probably be construed as an equitable charge upon the property; and, while he would not undertake to say that he was right about it, considering the interest that was felt and the complications that so surrounded it, he would take the money and get out of it.

Int. 9. Was not the money paid to you, or to the clerk by Redick's check in your presence, and the same time that you receipted to the clerk for the money—all done at that one time I gave the clerk my check and he put it on the books and you receipted it?

197 Ans. My recollection is that the check was given the clerk and the amount paid to me; that I receipted it upon the records at the same time in the court-house, Mr. Redick, myself, and the clerk being present. Whether there were others present I don't recollect.

Int. 10. Did you not state to Mr. Redick at that time that you would do just as he said about dismissing the suit—you would leave it to him to say what should become of it? What was said in that regard?

Ans. I don't think I said exactly that. I was inclined to dismiss the suit and clear the docket. Mr. Redick said to me that Bryant, I think it was, had a tax title upon the lots and had been made a party to the suit. He was apprehensive that it would be prejudicial to him if I would dismiss the suit, and he did not want me to dismiss the suit until he was satisfied that it should be dismissed. I think it drifted along, and I did not dismiss the suit until Redick told me he did not care if I dismissed the suit.

Int. 11. Didn't you say to me that you would do anything with the suit I wanted you to?

Ans. No; I did not use that language.

Int. 12. What did you say?

Ans. I said, in substance——

Int. 13. Give your language.

Ans. I said, in substance, that I would not dismiss the suit until you said dismiss it. That was what I said. I did not propose to keep the suit on the docket and prosecute it for the benefit of anybody.

Int. 14. Did you not dismiss the suit at my instance?

Ans. I cannot recollect now under what instance I did dismiss the suit. I had always intended to dismiss the suit. I think it probable I did dismiss the suit when you said.

Int. 15. Did you look after that deed and letter from Durant?

198 Ans. I did not. I understood that from the course the testimony took you did not want it.

Int. 16. When will you report to the master?

Ans. In a day or two.

Redirect examination by Mr. WEBSTER:

Int. 17. I will ask you whether, at the time the suit was dismissed, it was not upon the consent of myself, representing Frost, as well as Mr. Redick, representing himself, given in the morning on which the dismissal was made?

Objected to as not proper examination. Objection overruled. Exceptions taken.

Ans. That was my recollection.

Int. 18. I will ask you whether you intended by the statement which you made to Mr. Redick that you would not then dismiss the suit if he desired it to remain upon the docket—whether by that you intended to hold it upon the docket to prejudice the interest of George W. Frost in the property, or was it intended simply to accommodate Redick as to the controversy between him?

Objected to by Mr. Redick on behalf of complainant Spitly, and by Mr. Montgomery on behalf of the tax claimant Bryant, for the following reasons: First, because it calls for the intentions of witness; second, it is not proper redirect examination; third, immaterial. Objection overruled. Exception taken.

Ans. As between Redick and Frost I had no intention of prejudicing or helping either party. When I was asked not to continue the suit by Redick he put it on the ground of Bryant's relation to the suit. According to my recollection, certainly against the tax holder—as against that I was ready to help either Frost or Redick, and my purpose was to accommodate Redick if I could against them. I should have dismissed it at the close of the term, no
199 matter what I did with it.

ABBIE J. SHAW, a witness on behalf of defendant Frost, being first duly sworn and examined by Mr. WEBSTER, testified as follows:

Q. Where do you reside?
A. In Omaha, Nebraska.
Q. Are you a member of the family of Mr. and Mrs. Frost?
A. Yes, sir.
Q. Do you know the lots in controversy, being the Frost property in this city?
A. I do.
Q. Do you remember the time when Frost was appointed Indian agent to the Crow agency of Montana?
A. Yes, sir.
Q. Prior to that appointment you may state whether or not he had been occupying these lots as his home.
A. Yes, sir.
Q. When he went to Montana let me ask you whether or no you went along?
A. I did.

Q. What was done with the household furniture and wearing apparel when you went to Montana?

A. It was left in the house.

Q. Let me ask you why you did not sell it and take the money with you?

A. We did not expect to remain.

Q. How long did you expect to remain away?

This testimony is objected to by Mr. Redick—all that she has said and all that she may hereafter say—on the ground that it has been adjudicated. Ruling reserved.

A. We did not know how long; only a short time. We didn't expect to remain away long.

200 Q. You may state whether or not that was the reason the household furniture and wearing apparel was left in the house.

Objected to as leading. Overruled. Plaintiff excepts.

A. Yes, sir.

Q. You may state, Miss Abbey, how you came to go along with Frost on that official business and why you did not stay here in the occupancy of the house.

Objected to as immaterial. Overruled. Plaintiff excepts.

A. My father was requested to take his family with him in going to that position; we had to accompany him.

Q. You may state, if you know, what was the purpose of Mr. and Mrs. Frost in maintaining their homestead right in this property or abandoning their right in it when they went to Montana on this official business.

Objected to. This has been heretofore adjudicated by this court. Ruling reserved.

A. No, sir; he went to Montana expecting to remain only a time and return.

Q. You may state whether or no it was his purpose at that time to abandon these lots as his home when he went to Montana.

Objected to as incompetent. Overruled. Plaintiff excepts.

A. No, sir.

Q. Are you the daughter of Mrs. Frost?

A. I am.

Cross-examination by Mr. REDICK:

Q. While in Montana you held a position as teacher?

A. Yes, sir.

Q. What position was it—teacher of what?

A. Teacher of the Indian school.

Q. Who paid you?

[A.] The Government.

201 Q. How long were you employed?

A. About a year and a half.

Q. Is that a part of the institution of the Indian agency?

Objected to as immaterial. Overruled. Defendant excepts.

A. The school is kept there.
Q. Under the direction of the agent?
A. Yes, sir.

Objected to; it is immaterial to inquire into the machinery of the Department as to Indian affairs under the statute concerning the title to lots, with which Indians have nothing to do. Overruled. Defendant excepts.

Q. At the time you left here you say you did not know how long you would be gone. How do you know that? Did Frost say he did not know how long he would be gone?
A. Yes, sir.
Q. Did he take the Indian agency for any particular time?

Objected to. An Indian agent cannot contract as to how long he shall hold his position. Overruled, and defendant excepts.

A. Yes, sir.
Q. When you took the position as teacher in the school you had a permanent position, did you not?
A. For the time I was there.
Q. You never was removed yourself, was you?
A. No, sir.
Q. You would have occupied it right along if Frost had staid there?
A. I don't know.
Q. Did you not like it?
A. Yes, sir.
Q. Did it pay you well?
A. Yes, sir.
Q. Did Mrs. Frost have any occupation while she was there?

202 Objected to as not proper cross-examination and immaterial. Overruled. Defendant excepts.

A. Yes, sir.
Q. What was it?
A. She was matron.
Q. Of what?
A. Of the home.
Q. Did she draw a salary from the Government?
A. Yes, sir.
Q. Was she satisfied with her position, so far as you know?
A. As far as I know.
Q. She was not removed?
A. No, sir.
Q. Why did you and Mrs. Frost give up your positions?
A. Because we came away.
Q. Why did you come away?
A. Because father came away.

Q. You would not have come if he had not?
A. We might have come.
Q. Would you have come if he had not come?
A. I don't know but what we might; we expected to come.
Q. What is your best opinion?
A. I told you we talked of coming, but I don't know whether we might have come unless he had come.
Q. Do you think Mrs. Frost and you would have left there and given up your position if he had not come away?
A. I don't know; I could not tell you.
Q. What is your best judgment?
A. I think I have given it.
Q. Is that the best answer you can give?
A. I told you we talked of coming back in a year.

203 Q. Ain't it a fact, from what you know about that Indian agency business, that when Mr. Frost was removed you and Mrs. Frost could not have remained there occupying those positions?
A. Certainly we would not be likely to remain after he came away; certainly we should not.
Q. Ain't it a rule of the Government that a man who takes an Indian agency shall live there with his family?
A. I don't think it is as a rule of the Government, I know it is of the church, that he shall have his family with him.
Q. Was not Mr. Frost appointed at the instance of the church?
A. Not altogether.
Q. His nomination was put in at the instance of the church?
A. Yes, sir.
Q. Was it not a command that he should have his family with him?
A. It was preferred; I don't know it was a command.

Redirect examination by Mr. WEBSTER:

Q. Let me ask you what this request had to do with you and Mrs. Frost going with him to the Crow agency? Did you go as his family?
A. Yes, sir.
Q. As to these positions held by you and Mrs. Frost while there, let me ask you whether that was by virtue of an arrangement before you started or after you reached there?
A. After we reached there.
Q. At the time of Mr. Frost's removal, you may state whether you and Mrs. Frost were removed or whether you formally surrendered them to come to Omaha.
A. We formally gave them up.
Q. You may state whether you thought of returning, and whether that was one of the things for which you resigned to return.
A. Yes, sir.

204 Q. You may state whether in accepting these positions you accepted them with the purpose of holding them only while your father remained there in charge of the office.
A. No, sir.

JOHN L. WEBSTER, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. WEBSTER, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. John L. Webster; thirty-four; residence, Omaha; attorney-at-law.

Int. 2. State about when that suit was commenced.

Objected to as not the best evidence, as the record will show. Objection sustained.

Int. 3. State if you were the attorney of Mr. Frost to look after his interests in that litigation.

Ans. I was.

Int. 4. You may state why you did not file an answer in that case for Mr. Frost.

Objected to as immaterial. Overruled. Exceptions taken.

Ans. I did not file on answer in that case for the reason that under the terms of the decree which had been rendered in the case of Frost *vs.* Durant, which had been under the charge of Redick, that there was to be paid to Durant $302, with interest, amounting in all to six hundred dollars, before Frost was entitled to the property. When this ejectment suit was commenced the time when that money should have been paid, according to the terms of the decree, had long gone by and the money had not been paid, whereby Mr. Frost was not in a condition to demand a deed to the property and was not then able to perfect title in himself, whereby his
205 defense to this ejectment suit was one of great doubt and uncertainty as between him and Durant. At the time for filing the answer I had not had sufficient time to investigate the case to know what defense it was expedient for him then to make, and I was in great doubt whether I could make any defense at all to this suit in ejectment. Therefore I let the matter drift to watch the turn of events, knowing that the case would not be reached for trial until after an inconsiderable time for answering. At the succeeding term of the court, as I remember, Redick asked leave to come in and file an answer.

(To this part of the answer the plaintiff objects, and to his stating anything that was in the application, as not being the best of evidence.)

Redick made application to the court for leave to file an answer in his own behalf and stated to the court that he had acquired a title to the Frost property in controversy by the marshal's sale, and desired to be made a party defendant, with leave to answer. He may have set out some other facts in his written application, but I am not prepared to state about that. An answer was filed by Redick in that case, and thereupon the case stood in that attitude for a considerable time, and the case was not pressed for trial for some reason now unknown to me—whether it was because the parties were not anxious for trial or whether it was because it was not reached upon

the docket. In that court it required from one to two years to reach a contested case for trial. Afterwards Bryant asked leave to file an answer setting up some interest in the property. At that term of the court when he asked for leave to file an answer I was informed by the attorney for the plaintiff that he did not intend to try the case.

Objected to by the complainant. It is giving the statement of another person and is hearsay. Objection overruled. Exceptions taken.

206 That he had received from the clerk of the court the amount of money to be paid to Durant.

Objected to as hearsay testimony and immaterial. Objection overruled. Exceptions taken.

At that time, or a subsequent interview on a succeeding day, he informed me that he should dismiss the suit, and the case has never been tried.

Int. 5. You may state, if you know, whether there was any arrangement made or an understanding that no defence should be made in that suit on behalf of respondent Frost with a view of defeating the title or claim of Redick on this property.

Objected to as immaterial. Overruled. Exceptions taken.

Ans. No answer in that case had been filed. That case was under my charge as Mr. Frost's attorney. He had no other attorney in that case, to my knowledge. It was under my own direct charge, and I advised and acted upon my own judgment as to the propriety of filing an answer at that time, and my own judgment told me to wait the turn of events, and I did that on my own judgment, without any direction from Mr. Frost or anybody to delay the answer, and I delayed or neglected to answer. So my part as an attorney was not with a view of defrauding Mr. Redick, but with the sole view of watching events with a view of determining what was the best interests of Mr. Frost.

Mr. Webster, on behalf of the defendant Frost, offered in evidence a certified copy of the records in the case of Durant *vs.* Frost, being the receipt of A. J. Poppleton for the money paid in that case, and a certified copy of the order dismissing the suit, which are hereto attached, marked "Exhibit "C" and "D," respectively.

207 JOHN I. REDICK, a witness on behalf of complainant, being first duly sworn, testified as follows:

Int. 1. State what you know of the insolvency of respondent Frost.

Objected to as wholly immaterial. Overruled. Exceptions taken

Ans. I know that Mr. Frost is insolvent, and has been, for the past two or three years, utterly so.

EX. "C."

Receipt.

In District Court, Douglas County, Nebraska.

THOMAS C. DURANT, Trustee,
vs.
GEORGE W. FROST, ABBIE P. FROST, His Wife, and GEORGE P. BEMIS.

June 8, 1880, received of Wm. H. Ijams six hundred [and] thirty-six & $\frac{58}{100}$ dollars, the amount of the decree rendered in the case of Geo. W. Frost against the Union Pacific Railroad Company *et al.*, rendered in this court on the 28th day of March, 1876.

A. J. POPPLETON,
Att'y for Union Pacific Railroad Company and the Credit Mobilier of America.

Afterwards, at the June term of said court, and on the 10th day of June, 1880, the following judgment of dismissal was rendered in said court, to wit:

"EX. D."

Dismissal.

T. C. DURANT, Trustee, *vs.* GEORGE W. FROST *et al.*

It appearing to the court that the claim of the plaintiff in this cause has been fully satisfied, the action is now, on his mo-
208 tion, dismissed, so far as the same relates to him, at his costs made up to this time, it is therefore considered that the said defendants recover from the said plaintiff their costs herein expended up to the present time, taxed at $6.20.

STATE OF NEBRASKA, *Douglas County:*

I, Wm. H. Ijams, clerk of the district court in and for said county, do hereby certify that the foregoing is a full and true transcript of the originals of the same, as appear from the records of said court now in my office.

Witness my hand and seal this 4th day of April, 1881.

[SEAL.] WM. H. IJAMS, *Clerk.*

BYRON REED, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. WEBSTER, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Byron Reed; age, fifty-two; reside in Omaha; real estate agent.

Int. 2. Do you know the property in controversy in this suit, known as the Frost property?

Ans. Yes, sir.

Int. 3. Two lots with improvements thereon?

Ans. Yes, sir.

Int. 4. State what was the value of that property in the summer and fall of 1878.

Objected to as immaterial and seeking to contradict the sworn statement of the marshal of the United States or his deputy and the appraisers who appraised the property at the time it was sold. Overruled. Exceptions taken.

Ans. About six thousand dollars.

Int. 5. What is its value at the present time?

209 Objected to as immaterial. Overruled. Exceptions taken.

Ans. About seven thousand dollars.

Cross-examination by Mr. REDICK:

Int. 6. In fixing the value of this property you mean, of course, if the title was all perfectly clear?

Ans. Certainly; without reference to who owns it.

Int. 7. Do you know the value of Frost's interest in the property?

Ans. No, sir; I don't.

Int. 8. You don't know?

Ans. No.

Mr. Webster, on behalf of defendant, offers in evidence a certified copy of the order confirming report of sale in this case, dated January 7th, 1880, marked Exhibit "A."

JOHN I. REDICK, being called as a witness on behalf of respondent Frost, testified as follows:

Examined in chief by Mr. WEBSTER:

Int. 1. You just said that you was complainant and Frost was respondent?

Ans. No, sir; that is not correct.

Int. 2. How came you to say that you was complainant and he was respondent?

Ans. I said so because the title was between Frost and Spitly. I am, for all intents and purposes. I am making the contest for the benefit of my grantee.

Int. 3. You look upon this as your battle?

Ans. I am interested to that extent to make my title good to Spitly.

210 Int. 4. You sold Spitly December last?

Ans. The deed will show.

Int. 5. Was it sold on the date as shown by the deed?

Ans. The deed was made a few days afterwards.

Int. 6. Where does Spitly live?

Ans. Illinois.

Int. 7. Whereabout in Illinois?

Ans. Lincoln, Illinois.

Int. 8. What is his business?

Ans. Farming and operating. He owns a great deal of land in this State.

Int. 9. And you live in Omaha, Nebraska?

Ans. Yes, sir.

Int. 10. Before you sold these lots to Spitly you knew the title to this property was being contested?

Ans. I knew it would be.

Int. 12. Was not your title at that time questioned in the forcible detainer suit?

Ans. I think it was.

Int. 13. Was Spitly here at the time of the sale?

Ans. No, sir.

Int. 14. Where was it sold him?

Ans. Lincoln, Illinois.

Int. 15. Was you over there?

Ans. That is just where I was.

Int. 16. What did you go there for?

Ans. I have a hotel in that town, and I went there on that business, and while over there I sold them lots to him.

Int. 17. Had Spitly ever seen these lots?

Ans. I don't know whether he had or not; he had been here. I don't know whether he knew where they were exactly; he knows the location.

211 Int. 18. Did he know anything about the title?

Ans. He knew nothing about the title except the taxes.

Int. 19. You say he did not know about the title outside of the taxes?

Ans. No, sir; I don't think he did. I told him about some trouble in my title from Frost; aside from that I told him my title was good.

Int. 20. What did you get for the lots?

Ans. 320 acres of land, which I sold to Spitly since—I think the south half of 28, in 17 or 25; I don't know which.

Int. 22. What is that land worth?

Ans. $2,500 is what I consider it worth in money.

Int. 23. You made this deed; was it made when you was over there?

Ans. I sent it to him afterwards.

Int. 24. Was this deed ever in his possession?

Ans. I sent it to him, and he sent it to the recorder.

Int. 25. Is this not true, that this deed was never put on the record until I called your attention to the fact that it was not on record?

Ans. It was not put on record until a few days ago. He sent the deed to the recorder, and did not send the money to pay for recording it, and he stuck it in a pigeon-hole, and I wrote to Spitly about it after you called my attention to it that it was not recorded.

Int. 26. So, then, almost immediately after this trade you commenced suit to quiet title?

Ans. Yes, sir; I did.

Int. 27. Does Spitly know that there is any dispute about this property?

Ans. I don't know as he knows about this suit. He knows I was going to bring suit against Bryant.

Int. 28. He has no knowledge of this suit against Frost?

Ans. I don't know how it was his matter to settle the title.

212 Int. 29. As far as the suit against Frost to settle title, he don't know about it?

Ans. I have the authority to settle the title of that land against Frost or anybody else.

Int. 30. He gave you authority, but at the same time he knew nothing about it?

Ans. I told him I would have some trouble about getting possession of the property; I considered it proper that I should settle the cloud on the title to this property.

Here the complainant objects to these questions and answers as immaterial.

Int. 31. Don't you say somewhere in some of your pleadings that you got four hundred acres of land for these lots?

Ans. I would not be sure but what I did; if I did I wish to correct my testimony; I think, upon reflection, that I got four hundred acres—eighty acres besides the half section; I can tell by going to my office.

Int. 32. You made this trade in Illinois?

Ans. Yes, sir.

Int. 33. You did not go yourself to look up this land?

Ans. I owned it before I sold it to him.

Int. 34. Did you ever stop to look up the title?

Ans. The title came through me.

Int. 35. Do you know anything about it being encumbered?

Ans. Yes, sir; I know that it is not encumbered; if there is, he will settle it.

Int. 36. In your pleadings don't you say these lands you received are worth about four thousand dollars?

Ans. I think not; I know they were not worth that; if there is four hundred acres it is worth more than $2,500; it is worth about from eight to ten dollars per acre; it is not worth more than that.

213 Int. 37. There was no money passed between you?

Ans. No, sir.

Int. 38. When you went over there did you go with a view of getting this land?

Ans. No, sir; I went over there to see about getting some property I had there out of my hands and renting a store.

Int. 39. Is this much of a hotel?

Ans. Cost me about sixteen thousand dollars.

Int. 40. What is it worth?

Ans. Twelve thousand dollars.

Int. 41. Spitly lives in the country?

Ans. Yes, sir.

Int. 42. Did you go out to see him?

Ans. He asked me out to his house, as he always does; he is wealthy, and a man of business.

Int. 43. Ain't this true, that Spitly is a man of very little property?

Ans. No, sir; it is not true; Spitly is a man of large means.

Int. 44. This man Spitly—this German farmer—when was he in Omaha last?

Ans. You never can prove dates by me; he has been out here two or three times; I made a transaction with him in 1876 or 1877—1876, perhaps.

Int. 45. Has it been within the last eight years?

Ans. Within the last two or three years.

Int. 46. What was said between you and him about this tax title to this property? What would be the effect if you would lose it by tax title?

Ans. It had no effect; I was not afraid of losing it.

Int. 47. What did Spitly say about it?

Ans. He took my word for it.

Int. 48. What representations did you make to him as to the title he was getting?

Ans. I told him that he was getting a good title; that I got the deed from the marshal.

Int. 49. Did you tell him how Frost, who was a former owner, had a title on —?

214 Ans. No, sir.

Int. 50. You did not tell him that the legal title was in Durant?

Ans. No, sir; it was not true, because I bought the title myself.

Int. 51. You didn't tell him that the only title that Frost had was in Durant's hands?

Ans. No, sir; it was not true.

Int. 52. Supposing you failed in wiping out the tax lien?

Ans. There was nothing said about it; I only sold him my interest.

Int. 53. You have no interest in this property?

Ans. Only to back up this title.

Int. 54. You have not agreed to back up this title?

Ans. No, sir; but I am going to do it.

Int. 55. In your deed which you made I observe you did not give Spitly a warranty to title?

Ans. No, sir.

Int. 56. You are under no legal obligation to defend this title?

Ans. None, except a moral obligation. If I get it he will pay me for it.

Int. 57. Now, if you fail in getting a title what do you do?

Ans. I promised to get title against taxes. There was no obligation for me to give him back his land.

Int. 58. You don't propose to trade back?

Ans. No, sir.

Int. 59. Only give him in money?

Ans. No, sir; I am not obliged to give him a cent.

Int. 60. Let him stand on his deed?

Ans. No, sir; I would rather give it to him than to Frost.

Int. 61. In case the title to the land should fail you propose to keep the land?

Ans. I propose to keep it if he is not entitled to it.

Int. 62. You may give it back to him?

215 Ans. I won't say as to what I may do.

Int. 63. I mean what do you mean to do if you lose this suit and fail to get Spitly this title—you may give him back the land?

Ans. I don't know what I may do.

Int. 64. So far as you know now, you may give him back the land?

Ans. So far as I know, I would not.

Int. 65. You say Spitly is a man of means. What land has he got?

Ans. He has three thousand acres of land; he has laid out a town called Richland; he has twenty-five thousand dollars' worth in Nebraska; large amount of property, and fine property, where he lives.

Int. 66. Richland is where?

Ans. In Colfax county.

Int. 67. Do you know of him having any property anywhere else except this property you speak of here?

Ans. Yes, sir; he has a farm at Lincoln where he lives, and plenty of property around there.

JOHN L. WEBSTER, being first duly sworn, testified as follows:

Examined by Mr. WEBSTER:

Int. 1. You may state, if you know, what was the nature of the suit referred to in the testimony of Mr. Smith, referred to as No. 37, D.

Objected to as immaterial. Overruled. Exceptions taken.

Ans. It was a bill in equity of John I. Redick *vs.* George W. Frost, Thomas C. Durant, and the Credit Mobilier of America, in which Redick claimed a lien upon these lots.

Here complainant objects to this testimony unless the witness will state the contents of the bill.

Witness continues: I was familiar with that bill myself. I filed a demurrer to the bill, and myself argued it before Justice Miller.

216 By Mr. REDICK:

Int. 2. Do you know the contents of that bill?

Ans. No; the substance of the bill in a general way.

Here complainant objects to the witness answering further; he must give its contents or not at all. Overruled. Exceptions taken.

It was a bill in equity in which Mr. Redick claimed a lien upon this property by reason of his professional services or attorney's fees in the case of Frost *vs.* Durant and others in the State court,

which claim was based upon his contract with Frost and in evidence in this case here before the master, and by reason of the fact that in that suit of Frost *vs.* Durant the title to the lots was decreed to be in Mr. Frost, subject to the payment of moneys, as therein provided. To that bill I filed a general demurrer, and with the result, as shown by the minutes in the judge's docket, as testified to by Mr. Smith.

By Mr. WEBSTER:

Int. 3. State whether, in the order of reference in the case of 87, D, to Watson B. Smith, clerk of the court, to take proof on the question of homestead, *whether* the testimony of Mr. Frost or his family was taken; and, if not, why not.

Objected to as immaterial. Overruled. Exceptions taken.

Ans. The order of reference provided that proof should be taken within five days after the giving of notice to parties. Mr. Frost and his family were still in Montana, about seventeen hundred miles distant from Omaha, and seven hundred miles of which distance had to be made by stage through mountains; that it required thirty days to get a letter to Mr. Frost and an answer; that I made an application and filed it with the clerk of the court, supported by an affidavit, to have the time extended a sufficient time to obtain the testimony of Mr. Frost upon that question. I was told or notified by the clerk within two or three days thereafter that no
217 extension of time had been granted, and I was compelled to take my proof immediately lest the five [days] would expire, and the proof which was taken was accordingly taken within that five days. In support of that application I filed with the clerk of the court the following affidavit, filed Sept. 21, 1878:

Affidavit.

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEO. W. FROST.

George P. Bemis, being first duly sworn, deposes and says that he is the agent of said defendant Frost in looking after the various interests of said Frost in and about the city of Omaha; that since the departure of said Frost for Crow agency, Montana, affiant has been in communication with him; that from a letter received from a member of his family by affiant's wife affiant is informed and confidently believes that said Frost will be in Omaha within thirty days from this date; that Frost has been deposed from his position at said agency and is about to start, or has already started, with his family for Omaha, and will be here within said time; that it would require at least thirty days to communicate with said Frost at said agency, did affiant know that he had not already left there, and a still longer

time to obtain said Frost's deposition, and that under the last order of said court in this case the deposition of said Frost could not, as affiant is informed, be used, but that the testimony of said Frost must be taken before the clerk of said court, if taken at all.

Affiant further says, upon information and belief, that said Frost did not intend to give up, or in any way relinquish, his residence in this county and State when he went to said Crow agency,
218 but that said Frost intended to remain at said agency only so long as should be necessary to perform the duties of his position there, and that said Frost still claims Omaha as his residence and home and the lands attached in this case as his homestead, and that his absence therefrom is only temporary; that the testimony of Frost is necessary to satisfactorily establish these facts as to his absence, his residence here, and his claims of and rights to said lands as a homestead; that said defendant cannot, without Frost's testimony in this regard, make a showing in this matter satisfactory to the court or just to himself, and affiant believes such testimony can be produced within the thirty days' time asked as an extension of time for taking proofs under said order of court herein.

GEORGE P. BEMIS.

Subscribed in my presence and sworn to before me this 21st day of September, 1878.

WATSON B. SMITH,
Clerk U. S. Court,
By E. D. FRANK, *Deputy.*

Said affidavit is endorsed in words and figures following, to wit: No. 87, D. U. S. circuit court, district of Nebraska. John I. Redick *vs.* Geo. W. Frost. Affidavit. Filed Sept. 21st, 1878. Watson B. Smith, clerk.

Here complainant moves to strike out all testimony on that behalf on the ground that it is immaterial and hearsay.

By the MASTER: The witness has answered the question, and it will be considered on the final hearing with the question, or *res adjudicata.*

By Mr. WEBSTER: I offered in evidence a certified copy of the decree in the State court in the case of Frost *vs.* Durant. Said certified copy of decree is hereto attached, marked Exhibit —. No objections.

The complainant Spitly offers in rebuttal and will file with the master, to be attached, the petition, answer, and replication, and finding of judge Savage, who rendered the decree in the case of Geo. W. Frost against Thomas C. Durant and others. Said papers are hereto attached and marked, respectively, Exhibits —, —, —.

Testimony closed.

219 EX. X.

Decree.

In District Court, Third Judicial District of the State of Nebraska, for Douglas County.

At the February term of said court, to wit, on the 27th day of March, 1876, the Honorable James W. Savage, judge, being present and presiding in said court, the following proceedings were had in the case of George W. Frost *vs.* The U. P. R. R. Co. *et al.*, as appears of record on folio 497, Journal H of said court:

GEORGE W. FROST
vs.
THE U. P. R. R. CO., THE CREDIT MOBILIER OF AMERICA, and THOS. C. DURANT.

This cause coming on to be heard upon the pleadings and proofs offered in the cause, and the court, after hearing the arguments of counsel and being fully advised in the premises, do find the equities of the case with the plaintiff Frost to the extent following:

And do find that the plaintiff was in the employ of the defendant, Credit Mobilier, from October 15, 1865, to the 15th day of August, 1867; that it was agreed between plaintiff and defendant Durant that said plaintiff should receive for his services a fair and reasonable compensation, and that a fair and reasonable compensation for his services during that time was at the rate of five thousand dollars per annum and the rent of house.

And do further find that the said plaintiff is entitled to recover from said defendant two thousand dollars, expenses laid out by said plaintiff in the entertainment of guests of said defendant, The Credit Mobilier of America, and find that the aggregate sum of $11,166.60 was, on the 31st day of May, 1869, due from said defendant to plaintiff, less such payments as may have been made to plaintiff from the date of his employment until the date last aforesaid and the sums paid by said defendant for the purchase
220 of the lots in controversy and towards the improvements thereon; and the court finds said amount to be as follows:

Payments made by the Union Pacific Railroad Company from October 15th, 1865, to February 15th, 1866, at $1,500 per year, and from Feb. 15th, 1866, to August 15th, 1867, at $1,800 per year	3,200 00
Amount advanced by Credit Mobilier of America on lots and improvements	8,269 37
	$11,469 37
	11,166 66
Leaving a balance as follows	$302 71

And do further find that said Thomas C. Durant held and still holds the legal title to said premises in trust for said plaintiff, to be conveyed to him upon compliance with the terms of this agreement therefor. The court further finds that the receipts given by said plaintiff to the Union Pacific Railroad Company since May 1st, 1867, were in full of all services by him rendered it, and that the proof does not establish such fraud or mistake in giving said receipts as will authorize the court to set them aside, and that said defendant is not indebted to the plaintiff in any sum whatever, and that all services rendered for said defendant were paid for in full.

It is therefore ordered and adjudged by the court that upon the plaintiff's depositing with the clerk of the court for the use of said defendants within thirty days after the close of this term the sum of $302.71, together with interest on that sum from the 31st of May, 1869, that the said defendant, Thomas C. Durant, convey to said plaintiff, or cause to be conveyed to him, by a good and sufficient deed, with the usual covenants of warranty, the property in controversy, to wit, lots 3 and 4, in block 52, and that in default thereof Alfred Burley be appointed a special master for that purpose, who shall execute and deliver to said plaintiff a deed of said premises as such master and acknowledge the same, so as to entitle it to record;

and that the said defendants and all of them be forever barred
221 of all right, claim, or equity of, in, or to said property or any part thereof, and that judgment be entered against said defendants, The Credit Mobilier, for all costs of this action, to be taxed at $187.58, and each party gives notice of an appeal, and prays an appeal in open court.

STATE OF NEBRASKA, *Douglas County:*

I, Wm. H. Ijams, clerk of the district court in and for said State and county, do hereby certified that I have compared the above decree of said court with the original decree as it appears of record on folio 497, Journal H of said court, and that the same is a correct transcript thereof and of the whole of said original decree.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at the city of Omaha, this 12th day of April, 1881.

[SEAL.] WM. H. IJAMS, *Clerk.*

EXHIBIT XI.

In the District Court of the Second Judicial District for Douglas County, Nebraska. In Equity.

GEORGE W. FROST, Plaintiff,

vs.

THE UNION PACIFIC RAILROAD, a Corporation; THE CREDIT MOBILIER OF AMERICA, a Corporation, and THOMAS C. DURANT, Defendants.

The compl't, George W. Frost, represents to the court that the defendant, The Union Pacific Railroad Company, is a corporation

created and existing under the laws of the United States, and that the defendant, The Credit Mobilier of America, was and is a corporation created by and existing under the laws of the State of Pennsylvania.

222 Compl't further represents that the defendant, Thomas C. Durant, was president of the Credit Mobilier of America and vice-president of the said railroad company and sole managing agent of both said corporations from the date of the existence of each of them, with full authority and power by each of said corporations to him given to select such employees and upon such terms as he might think best and proper; that the officers of said corporations were almost, if not entirely, the same, and their interests in the construction of the Union Pacific railroad, as hereinafter set forth, were almost, if not quite, indentical, and that *in* all the acts and contracts made and entered into on the part of said Durant was by the authority of said corporations and for their interest and benefit.

Compl't further represents that in the month of December, 1865, defendant Durant, at that time an acquaintance and personal friend of compl't's, called upon him and represented that he was the authorized agent of said corporations, and that they were about to enter upon a large enterprise and undertaking, *i. e.*, the building of the Union Pacific railroad from Omaha city, Nebraska, west, and that the said corporations would require a large number of employees in and about the construction of the same, and that he desired to employ this compl't in some capacity in and for said corporations, and that they would pay him a reasonable and adequate compensation for his services.

Compl'nt further represents that at that time the said Durant, on the part of said corporations, promised and agreed that said corporations would pay him a fair and adequate compensation for his services during all the time he might be employed by said corporations; that he then and there promised that the said corporations would advance a sufficient amount of means to erect for said compl't a suitable residence in the city of Omaha in which compl't should reside.

223 Compl't further represents that on the representations and promises of said defendants he removed from Massachusetts to Omaha, and on the 15th day of Nov., in the year aforesaid, entered into the actual employ and service of said corporations; that about that time said Durant, as the agent of said corporations, represented to this compl't that the said corporations would be compelled to hire a large number of persons in the various departments, and that he was anxious that all persons should understand and believe that the corporations were unable to pay large salaries at that time, and requested this compl't, for the benefit of said corporations in that behalf, that it should be understood to the outsiders that this compl't was receiving pay at the rate of but $1,500 per annum, but at the same time promising him that he should be paid whatever his services were worth, and stated at that time that that would be between five and eight thousand dollars per year.

Compl't further represents in three or four months thereafter his

duties became so onerous and so varied in character, and the duties of all the employees as the road progressed in construction became greater and more important, and many complained of their low wages, so that it became necessary for the corporations to increase the wages of employees generally, and about that time defendant came to this compl't and made representations similar to those first hereinbefore stated, that they would increase his salary with the rest and pay him at the rate of $1,800 per annum, and that it should be so understood among the other employees, and that this compl't should give receipts in full, leaving the impression that that was all he was to receive, but at the same time promising and agreeing with compl't that that should be a mere nominal salary, and that they would allow him whatever his house rent was until he got a title to his premises and pay him whatever his services were honestly worth, fixing and promising at that time that it should be between five and eight thousand dollars per annum.

224 Compl't further represents that it was part of the original agreement between said defendants to this compl't that they would advance to him on his salary a sufficient amount of money to purchase two lots and erect a comfortable dwelling thereon, as hereinbefore stated, and that the compl't should have the right to select the location, put up the kind of house that he desired, and in pursuance thereof and under a clear and distinct understanding on the part of compl't and defendants, the corporations defendant, by their authorized agent, Durant, went with compl't, and compl't selected lots, being lots three and four (3, 4), in block No. 52, in the city of Omaha, upon which to erect his house, and the house was erected thereupon and paid for by compl't by drawing upon the funds of said corporations; that compl't took charge of the erection of said house, directed how it should be built, how arranged, and all concerning it, it being a most positive and distinct bargain and agreement between compl't and defendants that upon the final settlement compl't should become the owner in full of said premises and they would cause a title to be made thereto, deducting from his, said compl't's, salary the prime cost of said premises by them so advanced to compl't; that under and in pursuance of said agreement the compl't took possession of said premises on the — day of Oct., 1866, with his family, and has continued to reside therein until the present time and is now occupying the same.

Compl't further represents that the corporations defendant advanced for said compl't in and about said premises the sum of $8,769.37 and no more, leaving the premises in an unfinished condition, refusing to advance to compl't any more money for the finishing and completion of said premises, and thereupon this compl't called upon the agent of said corporations defendant, Durant, and asked him what he should do in regard to finishing said premises, and thereupon defendants promised and agreed that if compl't would go on with his own means and finish and entirely complete said premises in such manner as he thought proper for his own convenience that he should do so, and all they would ask in

225 the settlement when made between said corporations and compl't would be to deduct from the amount due compl't

for services the net amount of money expended by it upon said premises so advanced to him as aforesaid, then and there promising that the title to said premises should be made to him at any time thereafter when he should demand the same.

Compl't further represents that under and in pursuance of said several promises and agreements he went into the employ of the corporations defendant at the time aforesaid and received a nominal compensation, a portion of the time at the rate of $1,500 per annum and the balance of the entire time at the rate of $1,800 per annum, and rent of house since he took possession of the same; that he never would have consented to any such bargain or agreement had it not been understood and agreed upon that he should receive from the corporations what his services were worth, which was then admitted to be between five and eight thousand dollars per annum. It was upon the representations of defendants that it would induce other employees to hire at much lower wages and for their benefit alone he consented to give those receipts, which appeared upon their face to be in full for all demands, while in fact and in truth he expected and they promised to pay as aforesaid from five to eight thousand dollars per annum.

Compl't further represents that no final settlement has ever been made between said compl't and defendants, and that they refuse to make any, but now pretend that they have paid him in full of all demands; that compl't has demanded a deed to said premises, but they refuse to make one, but caused the deed to said premises to be taken in the name of the defendant, Thomas C. Durant, who now holds the legal title to said premises, and he, said Durant, and said corporations defendant are threatening to commence an action at law to oust this compl't from the possession of the same.

Compl't further represents that at the instance and request and under the promise of said defendants that they would make
226 a title to him upon demand if he would go on and finish and complete said premises at his own expense, this compl't expended upon said premises by way of permanent improvements the sum of at least $1,500, consisting of the following items:

May, 1867.	Cash paid for grading and filling terraces		214 50
June, '67.	Paid for sods and sodding		250 00
Nov., '66.	"	100 cedar posts	50 00
June, '77.	"	setting 100 posts and grading	27 50
Oct., 1866.	Paid for	roofing piazzas and bay windows	55 00
May, 1867.	"	24 forest trees, @ .75	18 00
" "	"	setting same	5 00
June, 1868.	"	roofs and bay window	32 00
June, 1868.	"	fruit and ornamental trees and shrubs	165 00
" "	"	two iron posts and setting	25 00
" "	"	stone steps, 30	60 00
" "	"	setting fruit trees, shrubs, etc.	22 00
Aug., '69.	"	repairing chimneys	14 00
June, '68.	"	two cistern pumps, repairs, and sinks	44 00

Aug.,	'68.	Paid for	partitions and plank floor in cellar	36 00
Nov.,	'70.	"	280 feet sidewalk	212 50
"	"	"	storm door	25 00
			furnace and fixtures	300 00
				$1,555 50

All of said expenditures the said defendants refuse to refund to compl't, or recognize any right or title in him to said premises.

Compl't further represents that he continued in the employ of said railroad company as purchasing agent therefor, and represented their interests in every way they deemed requisite, being subject to their order at any time, going and coming at their bidding, until the road was entirely completed, which was in May, 1869, during which time he expended, as such purchasing agent, and bought supplies of various articles for said corporations, to the amount of over
227 $13,000,000; that they never found the least fault with him, but always spoke of him in the highest terms for his promptness as a judicious purchaser and faithful performance of his duties.

Compl't further represents that in all of his service with said corporations he did the best possible for them, and used his entire skill, energy, and ability for their interest and in their behalf, and, considering the responsibility of the position and the great amount of labor, care, and time required to conduct the business assigned him, believes that his services were worth at least $6,500 per annum, and that the corporation defendant is justly indebted to this compl't on an accounting in the sum of at least $15,000.

Compl't further represents that because said corporations defendant hold said receipts, on their face appearing to be in full of all demands, they now refuse to settle or account to compl't in any way whatever, while this compl't charges the truth to be that these receipts were given under the promises aforesaid and in no other way; that they were given in the interests of the corporations defendant with the positive understanding at that time that it should only be for the purpose of enabling the said corporations to hire other men at low wages, but it should not preclude compl't from demanding and receiving back salary to the amount hereinbefore stated.

Wherefore compl't prays that an accounting may be had between plaintiff and defendants; that the court will find and decree that the title to said premises was conveyed to said Durant to hinder, delay, and defraud the complainant, and that said Durant now holds said title in trust for this complainant; that said corporation defendant may be barred of all equity and interest in said premises; that said Durant convey, by good and sufficient deed, said title to this complainant, and in default thereof that a master commissioner of this court make the same. Complainant also prays that if upon such accounting the court finds that there is a balance due complainant over and above the amount
228 already paid complainant and advanced to him and used in the construction and purchase of said premises, the court

order the same to be paid; and if it shall appear that complainant has been overpaid in the manner above stated, that he, upon receiving said deed, shall refund to defendants the amount so overpaid, with interest; and complainant further prays that an injunction may issue against said defendants, their attorneys and agents, from bringing any suit at law for the possession of said premises, and also that said Durant be enjoined from making any conveyance of said premises, and for such further order and relief as may be proper and just.

JOHN I. REDICK,
Att'y for Compl't.

STATE OF NEBRASKA, } ss:
County of Douglas, }

George W. Frost, being first duly sworn, deposes and says that he is the complainant named in the foregoing petition. Affiant further says that the facts set forth in said petition are true, as he believes.

GEO. W. FROST.

Subscribed in my presence and sworn to before me Feb. 10th, 1871.

W. R. BARTLETT,
Notary Public.

Said petition is endorsed as follows: G, 355. In district court, Douglas county. George W. Frost *v.* T. C. Durant *et al.* Petition. Filed April 29, 1871. George Armstrong, clerk. Jno. I. Redick, att'y for pl'ff.

EXHIBIT X 2.

In the District Court of the Second Judicial District for Douglas County, Nebraska. In Equity.

GEORGE W. FROST, Plaintiff,
vs.
THE UNION PACIFIC RAILROAD, a Corporation; THE CREDIT MOBILIER, a Corporation, and THOMAS C. DURANT, Defendants.

229 The compl't, George W. Frost, represents to the court that the defendant, The Union Pacific Railroad Company, is a corporation created and existing under the laws of the United States, and that the defendant, The Credit Mobilier of America, was and is a corporation created and existing under the laws of the State of Pennsylvania.

Compl't further represents that the defendant, Thomas C. Durant, was president of the Credit Mobilier of America and vice-president of the said railroad company, and sole managing agent of both said corporations from the date of the existence of each of them, with full authority and power by each of said corporations to him given to select such employees and upon such terms as he might think best and proper; that the officers of each of said corporations were almost if not entirely the same, and their interests in the construction of

the Union Pacific railroad, as hereinafter set forth, were almost if not quite identical; and that *in* all the acts and contracts made and entered into on the part of said Durant was by the authority of said corporations and for their interest and benefit.

Compl't further represents that in the month of October, 1865, defendant Durant, at that time an acquaintance and personal friend of compl't's family, arranged to see him, and represented that he was the authorized agent of said corporations, and that they were about to enter upon a large enterprise and undertaking—*i. e.*, the building of the Union Pacific Railroad from Omaha city, Nebraska, west, and that the said corporations would require a large number of employees in and about the construction of the same, and that he desired to employ this compl't in some capacity in and for said corporations, and that they would pay him a reasonable and adequate compensation for his services during all the time that he might be employed by said corporations; that he then and there promised that the said corporation would advance a sufficient amount of means to erect for said compl't a suitable residence in the city of Omaha in which compl't should reside.

230 Compl't further represents that on the representations and promises of said defendants he removed from Massachusetts to Omaha, and on the 15th day of November (Oct.), in the year aforesaid, entered into the actual service and employ of said corporations; that about that time said Durant, as the agent of said corporations, represented to this compl't that the said corporations would be compelled to hire a large number of persons in the various departments, and that he was anxious that all persons should understand and believe that the corporations were unable to pay large salaries at that time, and requested this compl't, for the benefit of said corporations in that behalf, that it should be understood to the outsider that this compl't was receiving pay at the rate of but $1,500 per annum, but at the same time promising him that he should be paid whatever his services were worth, and stated at that time that that would be between five and eight thousand dollars per year; and as a further inducement for compl't to make said arrangement and sign receipts at that time, said Durant, as the agent of said corporation, falsely and fraudulently represented to compl't that S. B. Reed, the superintendent of construction, and Webster Snyder, superintendent of the road, were only receiving $1,800 per annum, as shown by their receipts, but saying at the same time that compl't should receive the same salary as they did, while in truth and in fact the said Reed and Snyder were receiving and received from eight to twelve thousand per annum, which fact the said Durant at that time well knew, and which representations were false and fraudulent; and charges that he never should have signed the several receipts but through the false and fraudulent representations of said Durant, the authorized agent of defendant corporations; that said representations were made by said Durant for the sole purpose of deceiving and misleading the compl't, and thereby inducing him to agree to sign said receipts for the benefit of said corporations, and to injure and wrong the compl't; that said Durant was the leader and at the head of these

corporations, and a man in whom the compl't placed the utmost
231 confidence; that upon his being employed as before stated he soon became a most intimate friend, he, said Durant, making compl't's house the same as his own home, and frequently and while he was the agent of said corporation, and before he, compl't, had signed but few of said receipts, he frequently, at Omaha, interrogated said Durant as to the effect of signing said receipts, and he assured said compl't on every occasion that if he would continue to sign them they were mere memorandums, but at the end of his employment he should be settled with on a basis of from five to eight thousand dollars at least, or the same salary that was paid to Webster Snyder and S. B. Reed, which compl't alleges was between five and ten thousand dollars; that in accordance with said promise, soon after his employment had ended, compl't was requested to appear at Boston and make settlement with the board of said corporation, and they then and there voted him seven hundred dollars per annum additional, which compl't refused to take, insisting upon the terms of the original contract.

Compl't further says that when he was asked to sign said vouchers he stated that he signed them under his understanding with and upon the representations of said Durant, and said defendants, by their agents, said that they so understood it, and that on final settlement the company would pay him his full salary according to his original agreement, and until long after he signed said receipts he never knew they read in full.

Compl't further charges that at the time of making the representations first above mentioned, he, Durant, knew that no such bargain had been made with Snyder and Reed, but had, at that time, himself authorized said Reed to draw and receive such compensation for his service as he might think proper. Compl't further says that at the time of making this contract he was no lawyer, and was entirely ignorant of the legal effect of such a receipt, and by the confidence he had in Durant he was overreached and misled in law, but relied on the representations of Durant that their legal effect would be simply memorandums of the money received; otherwise compl't would [not] have signed them.

232 Compl't further represents [that] in three or four months thereafter his duties became so numerous and so varied in character, and the duties of all the employees as the road progressed in construction became greater and more important, and many complained of their low wages, so that it became necessary for the corporations to increase the wages of employees generally, and about that time defendants came to this complainant and made representations the same as hereinbefore stated, that they would increase his salary with the rest, and pay him at the rate of $1,800 per annum, and upon the same false and fraudulent representations of said Durant and the agents of said corporations he was induced and misled to sign receipts for the money he received, without paying any attention to what he was signing, and never knew they read "in full" and cannot now swear that they do so read, and here prays

the court for an order on defendants to produce said receipts for the inspection of the court.

Compl't further represents that it was part of the original agreement between said defendants and this compl't that they would advance to him on his salary a sufficient amount of money to purchase two lots and erect a comfortable dwelling thereon, as hereinbefore stated, and that the complainant should have the right to select the location, put up the kind of house that he desired, and in pursuance whereof, and under a clear and distinct understanding on the part of compl't and defendants, the corporations defendant, by their agent, Durant, went with compl't and compl't selected lots, being lots three and four (3 & 4), in block No. 52, in the city of Omaha, upon which to erect his house, and the house was erected thereon and paid for by compl't by drawing upon the funds of said corporations; that compl't took charge of the erection of said house, directed how it should be built, how arranged, and all concerning it, being a most positive and distinct bargain and contract between compl't and defendants that upon the final settle[ment] compl't should become the owner in fee of said premises, and that they would cause a title to be made thereto, deducting from his, said compl't's,
233 salary the prime cost of said premises so advanced to compl't; that under and in pursuance of said agreement the compl't took possession of said premises on the — day of October, 1866, with his family and has continued to reside therein until the present time and now is occupying the same.

Compl't further represents that the corporation defendant, Credit Mobilier, advanced for said compl't in and about said premises the sum of $8,269.37 and no more, leaving the premises in an unfinished condition, refusing to advance to compl't any more money for the completion and finishing of said premises; and thereupon this compl't called upon the agent of these corporations defendant, Durant, and asked him what he should do in regard to finishing said premises, and thereupon defendants promised and agreed that if the compl't would go on with his own means and finish and entirely complete said premises in such manner as he thought proper for his own convenience that he should do so and all they would ask in their settlement when made between said corporations and compl't would be to deduct from the amount due said compl't for services the net amount of money expended by it upon said premises so advanced to him as aforesaid, then and there promising that the title to said premises should be made to him at any time thereafter when he should demand the same.

Compl't further represents that under and in pursuance of said several promises, representations, and agreements he went into the employ of the corporations defendant at the time aforesaid, and continued in their employ until the completion of the road, which was in the month of May, 1869, and during which time he received from the Union Pacific Railroad Company, defendant, a portion of or *pro rata* for his service rendered, it being the same hereinbefore referred to, as well also as a portion or *pro rata* from the other corporation defendant, being the money advanced by it in purchase of

said lots and improvements, as hereinbefore stated, and no other.

234 Compl't further represents that no final settlement has ever been made between compl't and defendants, and that they refuse to make any; that said Durant holds said title in trust for said compl't and that compl't has demanded a deed to be made to him by Durant, which he refuses to make, but alleges that he and said corporations defendant are threatening to commence an action at law to oust this compl't from the possession of said premises, and prays your honor to cause an order to issue against said defendants, enjoining them and each of them from prosecuting said proceedings at law until such time as the exigencies of this bill may be determined and a settlement had between the parties.

Compl't further represents that at the instance and request and under the promises of said defendants that they would make a title to him upon demand if he would go on and finish and complete said premises at his own expense, this compl't expended upon said premises, by way of permanent improvements, in the sum of at least $3,000, consisting of the following items:

May,	1867.	Cash for grading and filling terraces, $214.50 and interest.		
June,	"	Paid for sods and sodding, $250.00 and interest.		
Nov.,	'66.	100 cedar posts, $50.00 and interest.		
June,	'67.	Setting 100 posts and grading		27 50
Oct.,	'66.	Paid for roofing piazzas and bay windows		55 00
May,	'67.	" 24 forest trees		18 00
"		" setting "		5 00
June,	'68.	" roofs and bay windows		32 00
"		" fruit and ornamental trees and shrubs		165 00
"		" two iron posts and setting		25 00
"		" stone steps		60 00
June,	'68.	" setting fruit trees, shrubs, etc.		22 00
Aug.	'69.	" repairing chimneys		14 00
June,	'68.	" two cistern pumps and repairs		44 00
Aug.	'68.	" partition and plank floor in cellar		36 00
	Nov., '70.	Paid for 280 feet of sidewalk		212 50
235	"	" storm door		25 00
		" insurance and taxes on the property, paid by compl't		210 00
	18.	Paid for well-digging, walling curbs, &c		200 00
		" lumber and materials furnished, and the building of a barn on said premises		700 00
		Trees outside of lot taken up in winter		50 00
		To labor furnished and expenses paid out by compl't from the date of his employment to May, '69, in the entertainment of guests of defendants at his house and elsewhere, at the special instance and request of defendants, and for the especial benefit of said corporations, per annum		2,000 00

All of said expenditures the defendants refuse to refund to said compl't or recognize any right or title in him to said premises.

Compl't further represents that he continued in the employ of said railroad company as purchasing agent therefor, and represented their interests in every way they deemed requisite, being subject to their order at any time, going and coming at their bidding, until the road was entirely completed, which was in May, 1869, during which time he expended as such purchasing agent and bought supplies of various articles for said corporation to the amount of over $17,000,000; that they never found the least fault with him, but always spoke of him in the highest terms for his promptness as a judicious purchaser and faithful performance of his duties.

Compl't further represents that in all of his service with said corporations he did the best possible for them, and used his entire skill, energy, and ability for their interest and in their behalf; and considering the responsibility of the position and the great
236 labor, care, and time required to conduct the business assigned him, believes that his services were worth at least $6,500 per annum, and that the corporation defendant is justly indebted to this compl't on an accounting in the sum of at least $10,000, with interest.

Compl't further represents that because said corporation defendant holds said receipts or vouchers they now refuse to settle or account in any way whatever, while this compl't charges the truth to be that he was induced to sign them by the false and fraudulent representations of Durant, *of* authorized agent of defendants; that he did not know they read "in full" at the time of signing them, nor does he know now that they so read, but supposing that he was signing mere memorandums of money received, and but for the representations and promises of their agent, Durant, he would have been more guarded and particular, and never would have signed said receipts if they read "in full" without taking legal advice as to their effect.

And plaintiff further alleges, upon information and belief, the said defendants paid said S. B. Reed a salary at the rate of $12,000 per annum.

Wherefore the said complainant prays that an accounting may be had between plaintiff and defendants; that the court will find and decree that the title to said premises was conveyed to said Durant to hinder, delay, and defraud the compl't, and that said Durant now holds said title in trust for this compl't; that the said corporation defendant may be barred of all equity and interest in said premises; that said Durant convey, by a goood and sufficient deed, said title to this compl't, and in default thereof that a master commissioner of this court make the same. Compl't also prays that if upon such accounting the court find that there is a balance due compl't over and above the amount already paid compl't and advanced to him, and used in the construction and purchase of said premises, the court order the same to be paid, and if it shall appear that compl't has been overpaid in the manner above stated that he, upon re-

ceiving said deed, shall refund to defendants the amount so overpaid, with interest.

237 And complainant further prays that an injunction may issue against said defendants, their attorneys and agents, from bringing any suit at law for the possession of said premises; and also that said Durant be enjoined from making any conveyance of said premises, and for such further order and relief as may be proper and just.

JNO. I. REDICK,
Att'y for Compl't.

STATE OF NEBRASKA, } ss:
Douglas County, }

George W. Frost, being first duly sworn, deposes and says that he is the complainant in the foregoing amended petition; affiant further says that the facts set forth in said petition are true, as he verily believes.

GEO. W. FROST.

Subscribed in my presence and sworn to before me this 22 day of Feb., 1875.

GEORGE ARMSTRONG, *Clerk.*

Said amended petition is endorsed as follows:

EXHIBIT "X 4."

STATE OF NEBRASKA:

In District Court for Douglas County.

GEORGE W. FROST, Plaintiff,
vs.
THE UNION PACIFIC RAILROAD COMPANY, THE CREDIT MOBILIER OF AMERICA, and THOMAS C. DURANT, Defendants.

The answer of The Credit Mobilier of America, one of the defendants, to the petition in the action.

It denies that the said Thomas C. Durant was the sole managing agent of said corporations at the times mentioned in said petition or had authority to select employees, except upon reasonable terms; or that the officers of said corporations were identical, or their interests were identical, or that all said Durant's contracts or acts

238 were by the authority of said corporations or for their interest or benefit, as alleged in the petition.

It denies that said Durant represented to plaintiff that this defendant was about to enter upon the undertaking mentioned in the petition or would require men or desired to employ the plaintiff for this defendant or would pay him a compensation for his services.

It denies that said Durant, on the part of this defendant, promised that this defendant would pay the plaintiff any compensation for his services. It denies that the plaintiff entered into the employ or service of this defendant.

It denies that said Durant requested that it should be understood that plaintiff was receiving or should receive any less amount of salary than he was in fact to receive. It denies that there was any agreement or promise or understanding that plaintiff should receive between five and eight thousand dollars per year for services to be rendered by him or receive anything, except the amounts actually paid to him by the Union Pacific Railroad Company from time to time and for which he gave receipts to said company. It denies that it ever increased plaintiff's salary or promised to pay him any salary or promised or agreed with him that his salary, which salary he received from the Union Pacific Railroad Company, should be only a nominal salary, or that his salary was fixed or promised at from five to eight thousand dollars per annum. It denies that there was any agreement that either of said corporations should advance upon plaintiff's salary the money to purchase any lots, erect a dwelling thereon, or that the costs of the premises should be deducted from plaintiff's salary, or that plaintiff should become the owner of the premises or any title should be made to him, except on his repaying in money the amount advanced by this defendant for the purchase of the lots and the erection of the dwelling-house thereon and for improvements on the lots and other disbursements on account of the premises, with interest on said amounts.

239 It denies that plaintiff took possession of the premises and resided thereon under or in pursuance of the agreement set forth in the petition, or otherwise than as herein alleged. It denies that it or said corporations promised or agreed that it or they would only ask in settlement to deduct from the amount due plaintiff for services the amount expended by them or either of them upon the premises so advanced to plaintiff, or promised that the title to said premises should be made to plaintiff except on repayment of the aforesaid amounts and interest thereon in money. It denies that the plaintiff went into its service on any terms, or into the service of said other corporations upon the terms and conditions set forth in the petition, or on any other terms than for a salary, as paid to him and receipted for by him.

It denies that there was any admission that plaintiff was to receive between five and eight thousand dollars per annum for his services, or that either of said corporations promised to pay him from five to eight thousand dollars per annum therefor, or that he gave the receipts for salary for the purpose alleged in the petition, or for any other purpose than that expressed therein. It denies that plaintiff's services were worth $6,500 per annum, or worth more than he received therefor, or that either defendant corporation is indebted to plaintiff on account of such services. It denies that the receipts mentioned in the petition were given by plaintiff upon the promises alleged in the petition, or with the understanding or for the purpose therein alleged.

Further answering, it says it advanced the means necessary to purchase said lots and erect said dwelling and make other improvements thereon to the amount or a larger amount than that mentioned in the petition, upon an agreement with the plaintiff that the

title thereto should be taken in the name of said Thomas C. Durant; that said Durant should hold the same in trust for this defendant until said plaintiff should pay the said amounts so advanced, with interest, when the title thereto should be conveyed to plaintiff; that said Durant still holds the title upon that trust, and no other, and that the plaintiff is not entitled to the conveyance thereof upon any terms or conditions other than those herein last above stated.

And it further says that the said Durant had no authority to make with said plaintiff for or in behalf of this defendant any such agreement as is set forth in the petition for the conveyance of said premises to the plaintiff, or for such conveyance to the plaintiff in consideration of any services rendered or to be rendered by him.

A. J. POPPLETON,
E. WAKELEY,
Att'ys for Def't.

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

Eleazer Wakeley, being first duly sworn, deposes and says that he is one of the attorneys for defendant above named, The Credit Mobilier of America, which is a corporation created by and existing under the laws of the State of Pennsylvania; that he has read the foregoing answer, and knows the contents thereof, and that the facts therein stated and set forth are true, as he believes.

E. WAKELEY.

Subscribed in my presence and sworn to before me this 2nd day of April, A. D. 1872.

GEORGE ARMSTRONG, *Clerk.*

Said answer of the Credit Mobilier is endorsed as follows: No. 355, G. District court, Douglas Co. George W. Frost *v.* The Union Pacific R. R. Co., The Credit Mobilier of America, and Thomas C. Durant. Answer of Credit Mobilier. Filed April 2nd, 1872. George Armstrong, cl'k, by Rob't Armstrong, deputy. A. J. Poppleton and E. Wakeley, def't's att'ys.

241 EXHIBIT X 5.

STATE OF NEBRASKA:

In District Court for Douglas County.

GEORGE W. FROST, Plaintiff,
vs.
THE UNION PACIFIC RAILROAD COMPANY, THE CREDIT MOBILIER OF AMERICA, and THOMAS C. DURANT, Defendants.

The answer of The Credit Mobilier of America, one of the defendants to the amended petition of the said plaintiff, states as follows:

The defendant admits that the Union Pacific Railroad Company is a corporation, and that this defendant is a corporation. It admits

that said Durant was such officer of each of said corporations, as is alleged in the amended petition, and was an agent thereof with certain powers; that said Durant employed the plaintiff to render services for the Union Pacific Railroad Company, and that the plaintiff was for a considerable time in the enploy of said railroad company as its purchasing agent. It admits that the receipts signed by said plaintiff read and purported to be in full for his services.

It admits that the lots described in the amended petition were selected, on which a dwelling-house for plaintiff to reside in was to be erected; that plaintiff took possession thereof; that a dwelling-house was erected and other improvements were made thereon; that the money of this defendant to the amount stated in the amended petition or more was used in the purchase of said lots and in making improvements thereon; that the title to said lots was taken in the name of said Durant; that the plaintiff expended some moneys in making or completing improvements on said lots, but to what amount this defendant is not reliably informed. It admits that the plaintiff, while in the service of the Union Pacific Railroad Company and at the expiration thereof, received of said company payments from time to time thereon. It admits that it may have purposed to commence some action or actions against the plaintiff to get possession of the premises in controversy or other proper relief.

242 It admits that no final settlement has been made between plaintiff and this defendant. It has no knowledge or reliable information that the allegations of the amended petition, other than those above amended, are true; wherefore it denies the same and eachr thereof.

Further answering, this defendant says, upon information and belief, and thereon alleges, that it was agreed and understood that the money necessary to purchase the lots in controversy and to erect a dwelling-house thereon or the principal portion thereof should be, and in fact was, advanced and furnished by this defendant through the agency of said Durant; that the title to said lots should be taken in said Durant's name in trust for this defendant; that the plaintiff should have possession of and occupy the premises with the improvements thereon, and if within a reasonable time, no time being definitely fixed therefor, the plaintiff should repay the money so advanced and furnished, with interest thereon, the premises should be conveyed to him; that the entire purchase price of said lots was paid with the moneys of this defendant so advanced, and a considerable portion of the costs of said improvements was paid therewith, the whole amount being as great or greater than is alleged in the amended petition in that behalf; that by reason of the facts the title to said lots was taken in the name of said Durant in trust for the defendant, and is still held by him in such trust, and cannot be rightfully conveyed to the plaintiff until he shall fully repay said moneys, with interest.

And, further answering, this defendant says, upon information and belief, that The Union Pacific Railroad Company, defendant, has fully paid the plaintiff for all services by him rendered for said

company, and the indebtedness of said company to the plaintiff of any description has been fully paid; and it further says, upon information and belief, that for and in consideration of certain sums of money from time to time paid by said Union Pacific Railroad Company to the plaintiff as compensation for his services mentioned in the amended petition, the complainant agreed to
243 and did receive the same in full satisfaction and discharge of all claims or demands against said company for said services, and signed and executed receipts in full therefor.

A. J. POPPLETON,
E. WAKELEY,
Att'ys for Def't, The Credit Mobilier of America.

STATE OF NEBRASKA, }
Douglas County, } *ss:*

E. Wakeley, being duly sworn, says he is one of the attorneys for The Credit Mobilier of America, defendant, which is a corporation, and that he believes the facts stated in the foregoing answer to be true.

E. WAKELEY.

Subscribed in my presence and sworn to before me this 24th day of April, 1875.

T. W. T. RICHARDS,
Notary Public in and for Douglas County, Nebraska.

Said answer of Credit Mobilier of America is endorsed as follows: 355, G. In district court, Douglas county. Geo. W. Frost *vs.* The U. P. R. R. Co. *et al.* Answer of Credit Mobilier of America. Filed April 24, 1875. George Armstrong, clerk. A. J. Poppleton, E. Wakeley, att'ys for def't.

EXHIBIT X 6.

STATE OF NEBRASKA:

In District Court for Douglas County.

GEORGE W. FROST, Plaintiff,
vs.
THE UNION PACIFIC RAILROAD COMPANY, THE CREDIT MOBILIER OF AMERICA, and THOMAS C. DURANT, Defendants.

The said Union Pacific Railroad Company and said Thomas C. Durant, for answer to the amended petition in this action, state as follows:

First defense. They deny, upon their information and belief, that said Durant was the sole managing agent of the said corporations defendant at the time mentioned in the amended petition, or had authority to select employees upon any terms other than rea-
244 sonable and proper, and deny that their officers were the same or their interests identical, or that all his acts and con-

tracts were by the authority or for the interest or benefit of said defendant corporations — defendant, The Union Pacific Railroad Company. They have no knowledge or reliable information as to what representations or promises the said Durant made to the plaintiff previous to plaintiff's removal from Massachusetts to Omaha, and upon belief deni*es* the allegations of the petition in that behalf, and said Durant denies said allegations. They have no knowledge as to the exact time when the plaintiff entered into the service of this defendant, and leave the plaintiff to his proofs in that behalf.

They deny that for the reasons in that behalf alleged in the petition, or for any reasons, the said Durant promised that the plaintiff should be paid whatever his services should be worth, or any greater sum than $1,500 per annum, except as hereinafter stated, and deny that said Durant stated that such services would be worth from $5,000 to $8,000 per annum. They deny that for any reason or at any time the said Durant falsely or fraudulently represented to the plaintiff that said Reed or Snyder were receiving only $1,800 per annum, or made any false or fraudulent representations on that subject for any purpose whatever.

They deny that said Durant was a leader in or at the head of said corporations defendant, except that he was an officer and to some extent a manager of the Union Pacific Railroad Company and at one time an officer in said Credit Mobilier of America. They have no knowledge as to the particular relation of, intimacy or friendship between, said Durant and the plaintiff, and leave the plaintiff to his proof in that regard.

Upon information and belief they deny each and every allegation of said amended petition touching the representations or assurances of said Durant to the plaintiff touching the effect, nature, or scope of any receipts signed or to be signed by the plaintiff, or the basis upon which the plaintiff should be settled with, and specially deni*es* that said Durant promised or agreed, in behalf of this defend-
245 ant, that the plaintiff should be settled with or be paid or should receive from this defendant, The Union Pacific Railroad Company, from five to eight thousand dollars, or from five to ten thousand dollars, or any greater sum or sums than those for which the plaintiff gave and signed receipts as herein, and also in the amended petition mentioned.

They deny the allegations of the amended petition touching the request that plaintiff should appear at Boston to make settlement with this defendant, The Union Pacific Railroad Company, and touching the vote to pay plaintiff additional compensation.

They deny that when plaintiff was asked to or did sign the vouchers or receipts for his services he stated that he signed them under any understanding or agreement with said Durant or upon any representations of said Durant, and deny that the defendants or either of them, by its or their agent or agents, or in any way, said or agreed or promised that it or they so understood, or that on final settlement this defendant, The Union Pacific Railroad Company, would pay to plaintiff any salary whatever beyond that receipted for by plaintiff.

The defendant, The Union Pacific Railroad Company, have no knowledge or reliable information as to what the said Durant knew in respect to the bargain made with said Reed and Snyder or either of them, or what authority he had given to either of them in respect to drawing or receiving compensation, and therefore it denies the allegation of the amended petition in that regard, and said Durant denies the same. They deny that in signing the said receipts or otherwise the said plaintiff was overreached or misled in any manner.

They admit that subsequently to plaintiff's first employment his salary was increased to $1,800 per annum, to be paid by this defendant, The U. P. Railroad Company, but deny that any representations were then or at any time made as to plaintiff receiving any compensation for his services beyond the said amount, and deny that said Durant or any agent of this defendant, The Union Pa-
246 cific Railroad Company, then or at any time made any false or fraudulent representations by which the plaintiff was induced or misled to sign any receipt or receipts for money received; and these defendants deny that said plaintiff never knew that the receipts signed and given by him for money received for his services read and purported to be in full therefor, and allege that he did well know that fact.

They deny that either of said corporations agreed to advance to the plaintiff on his salary a sufficient amount of money to purchase two lots and erect thereon a dwelling-house or to advance to plaintiff any sum whatever for that purpose on his salary; and they allege that the agreement and understanding in that behalf was in substance that sufficient money, or the principal part of the necessary money to purchase two lots and erect thereon a dwelling-house for plaintiff, should be advanced by the defendant corporations or one of them, and the title thereto should be taken in the name of said Thomas C. Durant, as trustee, for the party or parties furnishing the money; and whenever, within a reasonable time, the plaintiff should pay the amount which should be so advanced, with interest thereon, the said property should be conveyed to him, and the lots described in the amended petition were purchased and the monies advanced by said defendants or either of them for the dwelling-house or other improvements thereon were so expended in pursuance of such agreement and understanding, and the defendants have ever since been and still are willing that the said lots and improvements should be conveyed and to cause the same to be conveyed to the plaintiff on the condition aforesaid, and there was no other agreement on that subject.

And defendants deny that there was any bargain or contract that upon final settlement plaintiff should become the owner in fee of said premises or the title thereto should be conveyed to plaintiff by deducting from his salary the prime cost of said premises,
247 and aver that the plaintiff took possession of the premises under the agreement herein set forth and not otherwise. They admit that the amount mentioned in the amended petition was advanced by defendants in the purchase of the lots and making

of the improvements in controversy, but whether that was all the amount so advanced they are not informed and ask leave to show the true amount thereof.

Upon information and belief they deny that said Durant and plaintiff made the agreement alleged in the amended petition respecting the completion of the improvements on said lots, and deny that there was any agreement to the effect that the amount expended on the premises should be deducted from the amount due plaintiff on services, or that the title to said premises should be made to plaintiff at any time except on the condition herein set forth. They deny that — the plaintiff received during his services for the defendant or for such services was a *pro rata* or a partial payment and allege that it was *a* full pay therefor.

They deny that no final settlement has been made with plaintiff or that this defendant has refused to make one. They deny that the title to said lots is held in trust for plaintiff, and deny that plaintiff has any title to or interest in the said lots except the right to receive conveyance thereof on paying the amount due therefor. They have no knowledge or reliable information that the plaintiff has demanded of the said Durant a deed of said lots; wherefore it denies that allegation. They deny that the plaintiff expended the sums mentioned in said amended petition under any promise of said Durant that a title should be made to said plaintiff on demand, or otherwise than on the condition hereinbefore mentioned.

They have no knowledge or reliable information as to the amounts expended by plaintiff on the premises; wherefore they deny the allegations of the amended petition in that behalf and leave the plaintiff to his proofs.

248 The defendants, upon information and belief, deny the particulars and circumstances of the plaintiff's services as set forth in the amended petition, and expressly deny that his services were worth the sum of six thousand five hundred dollars per annum, or worth more than plaintiff was paid therefor, or that the defendants are indebted to the plaintiff in any sum whatever. They deny that said Union Pacific Railroad Company ever refused to settle or account with plaintiff, and they deny that the plaintiff was induced to or did sign any voucher or vouchers, receipt or receipts, by any false or fraudulent representations of said Durant, or of any agent or agents of the defendants, and deny that the plaintiff did not know that the same read and purported to be in full when he signed the same, or that he would have been more guarded or particular, or would not have signed the said receipts without taking legal advice as to their effect but for any representations of said Durant.

They deny that this defendant paid to said Reed a salary of $12,000 per annum, and, upon their information and belief, deny that the said Reed was in the employ of this defendant upon any salary.

Further answering, they say that only a part of the plaintiff's time during the period when he was in the employ of this defendant, The U. P. R. Co., was given or bestowed in its service, or in the

service of any one of the defendants; but, on the contrary, a considerable part of his time during said period was occupied in the service of certain persons contractors for building this defendant's railroad, and in a certain action therefor against said persons in the circuit court of the United States he claimed over forty thousand dollars for the services so rendered to and for them, and received therefor five thousand dollars.

Second defense. And, for a further and separate defense, these defendants say that as to so much of the plaintiff's alleged cause of action as relates to any services by him rendered prior to April 29th, 1867, the same did not accrue at any time within four years next preceding the time of the commencement of the action.

249 Third defense. And, for a further and separate defense, these defendants say that it has paid the said plaintiff in full for all the services mentioned in the amended petition, or at any time rendered by the plaintiff to this defendant, The U. P. R. Company; that from time to time, during the entire period from the commencement to the completion of the services so rendered at intervals, usually of about one month, the plaintiff rendered to this defendant, The Union Pacific Railroad Company, and presented for payment an itemized account for said services, specifying the time covered by said account, and which account in the aggregate covered the whole period of such services, and each and all of said accounts were paid by these defendants upon and in pursuance of an agreement then made in writing and signed by the plaintiff, whereby he set forth and stated that he received the amount specified in each of said accounts in full payment for the services specified therein, and this defendant, The Union Pacific Railroad Company, took from said plaintiff receipts for all the said services purporting to be and which in fact were receipts in full for all said services.

The said receipts were either literally or substantially in the following form, except in respect to dates and amounts, to wit:

MAY 31, 1869.

The Union Pacific Railroad Co. to George W. Frost, of Omaha, Dr.

For services as purchasing agent during May, 1869, $150, per bill on file.

Received June 10, 1869, of the Union Pacific Railroad Company one hundred and fifty dollars, in full payment of the above account.

$150. G. W. FROST.

And these defendants aver that the plaintiff well knew at the respective times or receiving such payments and signing such receipts that the same were and purported to be in full for his services, and did not in any manner indicate to the agents of this defendant, The Union Pacific Railroad Company, making such payments, that he claimed or expected to receive any other or further sum or sums for such services, but he did in fact understandingly and knowingly receive the sums so paid to him in full thereof.

250 And these defendants deny that any fraud, concealment,

misrepresentation, deception, or device of any description was used, made, or practiced by it or their agent or agents to induce the plaintiff to sign and give such receipts or enter into such agreements, or by or through or by reason of which the plaintiff did so. And they aver that from the beginning to the end of the transactions between plaintiff and these defendants or either of them it was understood and agreed between them and all of them that the amount of the salary paid to and received by the plaintiff for his services rendered for the defendant, The Union Pacific Railroad Company, should be and in fact was received and accepted by the plaintiff in full satisfaction and payment therefor.

A. J. POPPLETON,
E. WAKELEY,
Att'ys for Def't, The Union Pacific Railroad Company.

STATE OF NEBRASKA, } ss:
Douglas County, }

E. Wakeley, being duly sworn, says that he is one of the attorneys for The Union Pacific Railroad Company, defendant, which is a corporation, and that he believes the facts in the foregoing answer to be true.

E. WAKELEY.

Subscribed in my presence and sworn to before me this 24th day of April, 1875.

——— ———.

Said answer of U. P. R. Co. is endorsed as follows: G, 355. In district court, Douglas Co. Geo. W. Frost *vs.* The U. P. R. Co. *et al.* Answer of U. P. R. Co. Filed April 24, 1875. George Armstrong, clerk. A. J. Poppleton, E. Wakeley, att'ys for def't.

EXHIBIT X 7.

Reply.

In the District Court for Douglas County, Nebraska.

GEORGE W. FROST, Plaintiff,
vs.
THE UNION PACIFIC R. R. COMPANY, a Corporation; THE CREDIT MOBILIER OF AMERICA, a Corporation, and THOMAS C. DURANT, Defendants.

251 The plaintiff, for reply to the amended answer herein filed, denies that the agreement and understanding between plaintiff and defendant was that it should furnish a sufficient amount of money "or the principal part of the necessary money to purchase said lots and erect a dwelling-house thereon for plaintiff," as in said answer set forth; denies that the title was to be taken in the name of Durant in trust for the party furnishing the money; denies that the defendant has any title to said property "or any

power to make one," but alleges, as he has in his petition, "that the said Durant holds said title in trust for plaintiff; denies that he has been paid his salary in full; denies that a settlement in full has been made with either of said defendants; admits that a portion of the time of his employment with defendant "he did act as purchasing agent for the contractors so called," but alleges that it was at the instance and for the benefit of said railroad company.

Plaintiff further denies that for services claimed by him prior to April 29th, 1867, the statute of limitations have run, and alleges that it has long since that time recognized said account and paid a portion of it in the year 1869, and promised to settle the balance as in said petition set forth. Plaintiff admits that at many different times, from the commencement of his employment until it ceased, he would make out an account and receive money from the company upon it, but alleges that in every instance it was with the understanding and agreement had with the agent of said defendant at and before these times that they should be mere memorandums, he receiving no more money than was necessary to support his family or thereabouts, but that they should not be in full settlement, and denies that he ever made an agreement in writing or otherwise that the money he received should be in full of all demand against the company for his services; and denies that he ever gave receipts that were in full for all his services, and while it may be true that he signed a few receipts of the character and substantially the same as set out in the answer, but at this time has no recollection,
252 and therefore denies the same; and further says that if it should turn out he did sign said receipts he never read them or knew what they contained and signed them certainly by mistake and misapprehension of their meaning, but supposed he was signing memorandums, as herein set forth; and denies that he never indicated to the agents of these defendants making such payments that he didn't claim any further services, but almost in every instance stated to the agents that they were but mere memorandums, and upon final settlement he would get his full pay, or words to that effect; and denies that there was any understanding, from beginning to end, that those payments should be in full of all demands.

JOHN I. REDICK,
Att'y for Pl'ff.

STATE OF NEBRASKA, } ss:
Douglas County, }

George W. Frost, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled cause; that he has read the foregoing and knows the contents thereof, and that the same are true, as he verily believes.

GEO. W. FROST.

Subscribed in my presence and sworn to before me this 14th day of June, 1875.

GEORGE ARMSTRONG, *Clerk.*

Said replication is endorsed as follows: G. 355. In the district court for Douglas county. George W. Frost *vs.* The Union Pacific R. R. Co. Replication. Filed June 14, 1875. George Armstrong, clerk. John I. Redick, att'y for pl'ff.

253 Mrs. ABBY B. FROST, a witness called in support of the cross-bill of Mr. and Mrs. Frost, being first duly sworn, testified as follows:

The complainant objects to any testimony being given by Mrs. Frost, for the reason that she is an improper party to this suit and has no interest in the property and her rights cannot be determined in this action. Overruled. Exceptions taken.

Counsel for Mr. Frost further gives notice to the counsel for the complainant that he will rely upon the testimony introduced under the cross-bill, in question of the homestead, in support of the allegations in the answer of Frost as to the complainant below.

Int. 1. Are you the wife of Geo. W. Frost?

Ans. Yes, sir.

Int. 2. And you know the property in controversy, known as the Frost property, being lots 3 and 4, block 52, in this city?

Ans. Yes, sir.

Int. 3. You may state how long this property has been occupied by you and family as a home.

Ans. We went on it in the fall of 1866.

Int. 4. You may state whether or not you have occupied that property from that time to the present.

Ans. Yes, sir; excepting the time when we were in Montana.

Int. 5. How long were you in Montana?

Ans. About eighteen months.

Int. 6. For what purpose did you go to Montana?

Objected to as immaterial. Overruled. Exceptions taken.

Ans. Mr. Frost went as Indian agent.

Int. 7. As Indian agent under an appointment from the Government?

Ans. Yes, sir.

254 Int. 8. It was his official duties as Indian agent. Did he have any other duties that took him there at that time?

Ans. No, sir; not that I know of.

Int. 9. How came you to go with him?

Objected to as immaterial. Overruled. Exceptions taken.

Ans. We did not make up our minds to go until the Commissioner of Indian Affairs or the missionary society requested that the family should go with the agent.

Int. 11. Did you go by reason of that request of the missionary society?

Objected to as leading. Objection sustained.

Int. 12. Why did you go?

Ans. That was the motive of our going.

Int. 13. Did you have any other reason aside from that request of the missionary society?

Objected to as leading. Objection sustained.

Int. 14. You may state whether or not that was your chief reason for going or whether there was any other reason for going.

Ans. We thought it might benefit our health to take the journey.

Int. 15. Let me ask you, at that time, to state what was your purpose as to abandoning your residence here.

To which Mr. Redick, counsel for complainant, objects as immaterial and incompetent. Overruled, subject to future consideration. Exception taken.

Ans. We were only going to stay a short time; Mr. Frost told me that we could come back in the spring, but after we were gone he did not dare trust us to come home alone, so we staid until he got ready to come.

Int. 16. Why did you not come back in the spring?

Ans. It was a very hazardous journey. The Indians were crossing the path.

255 Int. 17. What path?

Ans. From the agency to the railroad. They attacked the State several times.

Int. 18. What was your purpose and intention about maintaining your homestead right to these two lots at the time you went and during your absence in Montana?

Objected to as immaterial and incompetent. Overruled. Exceptions taken.

Ans. We had no idea as to leaving only for a time. We expected to return.

Int. 19. State if at any time you had any intention of abandoning your homestead in this city.

Objected to as leading. Sustained.

Int. 20. You may state what conveyance, if any, or what release, if any, you made at any time of your homestead right in this property.

Objected to as immaterial and incompetent. Objection overruled. Exceptions taken.

Ans. Never made any.

Mr. Redick, on behalf of complainant, objects to all the testimony of Mrs. Frost on the further ground that the same question has been adjudicated by this court. Ruling reserved.

Int. 21. When did you return from Montana?

Ans. In January, 1879.

Int. 22. What did you do with your household furniture when you went to Montana?

Ans. We left it all except one room; Mr. Bemis wished to put his own carpet down in that, as he had small children.

Int. 23. Why did you leave the furniture in the house?

Objected to as immaterial. Overruled. Exception taken.

Ans. We left it just as we used it ourselves, to accommodate Mr. Bemis.

256 Int. 24. Did you have any reasons, so far as this is concerned?

Ans. We left them to take care of the house and furniture.

Int. 25. What, if anything, had your intention of returning to do with your intention of leaving the furniture in the house?

Ans. So as to have it ready for us when we came back.

Int. 26. How about your wearing apparel?

Ans. We left it all; only took a very little with us on the journey.

Int. 27. Why did you leave that in the house?

Ans. We did not think we should need it.

Int. 28. What had that to do with your returning?

Ans. We should need it when we came home.

Mr. Redick, on behalf of the complainant, objects to all her answers on the ground that the same has been adjudicated by this court.

Cross-examination by Mr. REDICK:

Int. 29. Do you recollect when Mr. Frost went to New York to see about getting a deed to these lots, in 1876?

Mr. Webster objects to this question for the reason that it is not proper cross-examination and as being immaterial under the issues in the cross-bill between Mrs. Frost and Mr. Spitly. Overruled. Exceptions taken.

Ans. I was not home then.

Int. 30. In 1876?

Ans. We were East when he went to New York.

Int. 31. Did you see Mr. Frost when he went to New York?

Mr. WEBSTER: Same objection as before. Overruled. Exception taken.

Ans. No, sir.

Int. 32. Do you know what time he went down there in 1876?

Mr. WEBSTER: Same objection. Overruled. Exception taken.

257 Ans. I think he went in autumn.

Int. 33. Do you know when he returned?

Ans. Yes, sir; I could not say what month.

Int. 34. How long was he gone?

Ans. I could not say exactly; two months, probably.

Int. 35. Did he say to you when he came back that he had arranged to get the deed to these two lots?

Mr. WEBSTER: Same objection as before, and in addition thereto that the question is leading. Overruled. Exception taken.

Ans I don't recollect.

Int. 36. You don't recollect that?

Ans. No, sir.

Int. 37. Aint it a fact that he told you that he had made arrangements with Mr. Durant to have the deed sent to Poppleton, to be delivered to him?

Ans. I don't recollect. He was very ill when he came back. He had the typhoid pneumonia and was sick for eight weeks.

John L. Webster.

This testimony to be used in support of the cross-bill of Mrs. and Mr. Frost, and also in support of the answer of complainant's bill.

Examined by Mr. WEBSTER:

Int. 1. Were you present at the time of the sale of the lots in controversy to John I. Redick?

Ans. I was.

Int. 2. At the time of the sale of the property to Mr. Redick, what notice, if any, did he have of the fact that these lots were claimed by Frost as his homestead?

Ans. I was present at the sale, and attended the sale for the purpose, among other things, of giving notice to whoever should
258 purchase the land that Mr. Frost claimed a homestead interest therein, and I so publicly stated that fact in the hearing of Mr. Redick.

Mr. Redick objects to the question and answer as immaterial. Overruled. Exceptions taken.

Int. 3. Did you have a conversation with Mr. Frost just prior to his departure for Montana, and after he had received the appointment of Indian agent, as to what effect his absence in the performance of his official duties as such Indian agent, if he should accept such appointment and go to Montana for such a purpose, would have upon his homestead right in this property? And, if so, you may state what the conversation was.

To which Mr. Redick objects as immaterial and incompetent, calling for hearsay testimony, and the question of his homestead has been before this completely adjudicated by this court. Overruled. Exceptions taken.

Ans. I had a conversation with Mr. Frost just before his departure for Montana on his official business, which occurred as we walked up town together toward our homes, in which he informed me of his purpose to go to Montana, but did not want to abandon his homestead right in his property, and inquired of me what effect it would have upon his homestead claim to accept that official position and go to Montana and perform his official duties. I simply gave to him my judgment as to the legal effect of such actions.

Int. 4. State what you know of his intention to abandon his homestead by going to Montana.

Same objection as before. Overruled. Exceptions taken.

Ans. I know that after he had determined to go to Montana, when it was generally known that he intended to go, that he was inquired of on the street in my presence, and in my hearing, whether
259 or no he would not rent the property in controversy, and Mr. Frost declined to rent the property and said to me in the course of the conversation that he would not rent the property; that he meant to maintain it as his home and did not want to have the property injured, as it would naturally be by renting it out to tenants.

W. B. SMITH, being first duly sworn, testified as follows:

Examined by Mr. WEBSTER:

Int. 1. Are you the clerk of the United States circuit court?
Ans. I am.
Int. 2. Have you made search for the files in the case of John I. Redick *vs.* George W. Frost, in equity, numbered 37 D?
Ans. I have.
Int. 3. With what result?
Ans. Not able to find them in the office.
Int. 4. Do you know where the files are?
Ans. I do not.
Int. 5. Have you the trial docket showing the decision of the judge made in the dismissal of the demurrer?
Ans. I have.
Int. 6. Turn to it, please. Will you please read it?
Ans. This minute is as follows: "Entered May term, 1877, June 16th. Demurrer sustained. Plaintiff abides by demurrer, and bill dismissed."

260 JULIA B. BEMIS, a witness called in support of the cross-bill of Mr. and Mrs. Frost, being duly sworn, testified as follows:

Mr. Redick, on behalf of complainant Spitly, objects to this testimony, or any testimony, being taken in support of Mrs. Frost's cross-bill in this action, upon the ground that she is not a proper party to the suit and her defense cannot be made in this action. Overruled. Exception taken.

Examined by Mr. WEBSTER:

Int. 1. Mrs. Bemis, are you the wife of Geo. W. Bemis?
Ans. Yes, sir.
Int. 2. You are acquainted with Mr. and Mrs. Frost?
Ans. Yes, sir.
Int. 3. Do you know the time when Mr. Frost, with his family, was in Montana?
Ans. Yes, sir.
Int. 4. Do you know their business in Montana? You may state, if you know, for what purpose Mr. Frost went to Montana, to do what business.

Ans. Indian agent at the Crow Indian agency.

Int. 5. During his absence who occupied the house and lots known as the Frost property in this city?

Ans. Mr. Bemis and myself.

Int. 6. Under what arrangement did you occupy this property?

Objected to by Mr. Redick as immaterial and incompetent. Overruled. Exception taken.

Ans. We took the house to take care of it for Frosts while they remained away; as their home while they were gone.

Int. 7. What furniture did they leave in the house?

Ans. Everything; all was left.

261 Int. 8. Stored away or just as it was used by the family?

Ans. Just as they used it.

Int. 9. How about the kitchen furniture?

Ans. They left it just as they used it.

Int. 10. How about their wearing apparel?

Ans. Everything was left in the closet just as they used it.

Int. 11. Upon their return did they come into the house as before?

Ans. Just the same.

Int. 12. What do you know about their intention when they went to Montana of relinquishing their home here?

Objected to by Mr. Redick as immaterial and incompetent. Objection sustained.

Witness continues: They had no idea of staying any length of time and did not relinquish their title. It was their home and they expected to come back.

Int. 13. Where is Mr. Bemis now?

Ans. Very sick at home.

Int. 14. Is he able to come here and testify?

Ans. No, not able to get out of bed or raise his head from the bed. The doctors do not allow me or any one else to see him. He has been sick a week to-day.

Int. 15. An arrangement was made between Mr. and Mrs. Frost and yourself and husband. Do you know the facts?

Ans. Yes, sir; I know the facts.

Cross-examination by Mr. REDICK:

Int. 16. You say you used everything just as when they were there?

Ans. Yes, sir.

Int. 17. Did you eat off the same dishes?

Ans. No; we used the furniture.

Int. 18. You didn't use the same kitchen furniture?

262 Ans. Yes, sir.

Int. 19. You mean you used the furniture in part and part of your own things?

Ans. No; we used all the furniture.

Int. 20. Didn't you put down some of your own carpets?

Ans. We put down one carpet.

Int. 21. You didn't use everything?

Ans. Everything but one room.

Int. 22. Ain't it a fact that you and Mrs. Frost are quite friendly—quite intimate with each other?

Ans. We always have been.

Int. 23. And you are inclined to do her all the good you can in a fair way?

Ans. I most surely would.

Int. 24. You do not think so much of Mr. Frost.?

Objected to by Mr. Webster as improper and impertinent. Objection sustained. Exception taken.

Int. 25. Did Mr. or Mrs. Frost say anything to you at the time when they left about where the deed to the premises was?

Objected to by Mr. Webster as not proper cross-examination. Objection overruled. Exception taken.

Ans. There was nothing said to me, I think.

Int. 26. Was there anything said to your husband in your presence?

Ans. I think not; not that I remember of.

Int. 27. Didn't Mr. and Mrs. Frost state to you and your husband, or in your presence, that Mr. Frost had been down to New York and got it arranged so that he could get his deed to this property?

To which Mr. Webster objects. Overruled. Exception taken.

Ans. I don't remember, Mr. Redick.

Int. 28. You don't remember?

Ans. I do not.

263 Int. 29. I only speak of it because your husband has stated it in a deposition here. You don't remember anything about his being to New York?

Ans. I remember that he was in New York to see about his deed to his property.

264 *Cross-Bill of Spitly vs. Bryant et al.*

Mr Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offers in evidence the tax deed to Thomas Bryant, issued Sept. 13th, 1875, on lot four, block fifty-two, of the property in controversy, which was given for the payment of taxes for the year 1872, and filed for record September 13th, 1875, recorded in book 18 of deeds, page 590, of the records of Douglas county, Nebraska.

To which Mr. Estabrook, on behalf of the defendant Frost, objects, for the reasons—first, that the pleading shows that there were taxes due prior to that time for the years prior to 1872 which were not paid or offered to be paid—at least there is no allegation to that effect; second, that the deed is void on its face, for the reason that it does not state where the sale took place, and is not therefore in the form provided by statute.

Mr. Redick, on behalf of defendant Spitly, makes the same objections, and, in addition thereto, that the introduction of the deed at this time is incompetent, *as* there being no foundation shown for granting of the certificate which was presented to the treasurer of Douglas county upon which the deed was demanded; and, further, the party executing the deed does not appear to have been the treasurer that signed the certificate, and it does not appear to whom said certificate was given; and, further, it is void, it appearing by the bill that there was taxes due and unpaid prior to the rendition of the deed. Said deed is hereto attached, marked Exhibit A, C. B.

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered in evidence the deed above referred to (in case the deed is held void) for the purpose of showing the date and fact of sale, and to which defendants Frost and Spitly, by their counsel, make the same objection as above.

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered to introduce in evidence for the purpose
265 of establishing title, the tax deed to Thomas Bryant on lot three, block fifty-two, issued, for the taxes of 1872, December 20th, 1875, filed for record the same day, and recorded in book 19, page 349, of the records of Douglas county, Nebraska, by a certified copy of it taken from the record.

To which Mr. Estabrook, on behalf of defendant Frost, makes the same objections as to the first deed, and the defendant Spitly makes the same objections as to the first deed offered, and in addition thereto that it isn't the original, and therefore not the best evidence.

Said tax deed is hereto attached and marked Exhibit "B, C. B."

Mr. Montgomery offers the deed also for the purpose of establishing the date and fact of sale.

To which offer the defendants in the cross-bill make the same objection as above.

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered in evidence a certified copy of the tax certificate filed in the clerk's office of Douglas county for the purpose of showing the date and fact and amount of same.

To which Mr. Redick, on behalf of defendant Spitly, objects as being immaterial and not the best evidence; and, further, the certificate does not show where the sale was made, and for the further reason that there is no endorsement or writing across its face, "sold for taxes at private sale," as provided by law. To which Mr. Estabrook, on behalf of defendant Frost, makes the same objection as made by Mr. Redick.

Said certificate is hereto attached, marked Exhibit "C, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offers to introduce in evidence the tax certificate issued by the treasurer of Douglas county for lot 3, block 52, of the property in controversy here, dated Sept. 9th, 1874, to show the fact, date, and amount of sale.

To which Mr. Redick, on behalf of defendant Spitly, objects for the reason it does not show where said property was sold. Mr. Estabrook, on behalf of the defendant Frost, makes the same ob-

jection, and, in addition thereto, it is incompetent and immaterial to establish the title. Defendant also makes the same additional objection.

Said tax certificate is attached hereto and marked Exhibit "D, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered to introduce in evidence for the same purpose a tax certificate of the same date for the taxes of 1873, on lot four, block fifty-two, of the property in controversy, issued at the same time and under the same circumstances.

To which offer the defendant Frost, by his counsel, makes the same objection as before, and, in addition thereto, that it shows that the taxes were paid subsequently to the sale for the taxes of 1872. To which the defendant Spitly, by his counsel, makes the same objections as made by defendant Frost.

Said tax certificate is hereto attached and marked Exhibit "E, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered to introduce in evidence the tax deed made to Thomas Bryant for lot four, block fifty-two, of the property in controversy, for the taxes of 1871, issued January 22nd, 1878, and recorded January 24th, 1878, in book 23, page 620, of records of Douglas county, Nebraska.

To the introduction of which deed the defendant Frost, by his counsel, objects—first, because the deed is void on its face, not showing the place of sale; second, because it was for the taxes of 1871, which it was necessary for Bryant to pay at the time he took his deed of 1875; third, that it is incompetent for a person owning property to permit or suffer his property to go to sale and buy it in himself. The same objection is made to said deed by counsel for and on behalf of defendant Spitly.

Said deed is hereto annexed, marked Exhibit "F, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered to introduce in evidence the tax certificate issued to E. Satterthwaite, and assigned by her to Thomas Bryant, being the tax certificate upon which the deed last before mentioned was issued, for the purpose of showing the fact and amount of sale.

267 To which Mr. Estabrook, on behalf of defendant Frost, objects on the ground that it is immaterial under the issues and incompetent for the purpose of establishing title. To which the defendant Spitly, by his counsel, makes the same objections, and, in addition thereto, that there is no proof of the assignment of said certificate.

Said certificate is hereto attached, marked Exhibit "G, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered in evidence a certified copy from the records in the treasurer's office of the treasurer of Douglas county, Nebraska, relating to the property in controversy, for the purpose of showing dates and amounts of purchase, and also for the purpose of showing

in whose name the property — assessed for the year in which he paid city tax.

To which the defendant Frost objects for the reason that it is not the best evidence, there being no reason why the treasurer should not have been subpœnaed here. Furthermore, it is incompetent to establish title under the issues, and that the proper steps showing it to be a valid lien or claim upon this property for paying tax has not been shown. To which the defendant Spitly makes the same objection to the introduction of this paper; and, further, that it is not the best evidence of the amount of tax paid by Bryant.

Said certified copy from the records of the treasurer's office is hereto attached and marked Exhibit "H, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered in evidence a certified copy of the records of the county treasurer's office of Douglas county, Nebraska, showing the dates and amounts of payments and sales for taxes on this property from 1867 up to 1878, inclusive, and other facts appearing in the abstract or copy.

To which Mr. Estabrook, on behalf of defendant, objects, for the reason already stated, to the first certificate, and for the additional reason that the tax receipts are the best evidence of taxes paid. Defendant Spitly, by his counsel, makes the same objection, and,
268 in addition thereto, that there is no seal of the county treasurer, and it is not the best evidence of the payment of taxes.

Said certified copy of the records is hereto attached and marked Exhibit "I, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered to introduce in evidence certified copies of the records in the office of the treasurer of Douglas county, Nebraska, showing copies of the certificates issued for the sale of the lots for the taxes of 1877, copy of notice upon George W. Frost, occupant of the lots, and proof of service being introduced in evidence upon which the tax deed next to be offered was issued.

To which defendant Frost, by his counsel, objects for the reason that more than one lot is included in the notice, making it fatal, and for the further reason that there is nothing to show that Thomas Bryant is the assignee of J. C. Noyes, or that he is entitled to a deed, further showing that the notice was served by an agent and not in person. Counsel for defendant Spitly makes the same objections, and, in addition thereto, that a certified copy thereof is not the best evidence, and that notice was not served in time, as required by law, to the issuing of the deed.

Said certified copies of record are hereto attached and marked Exhibit "J, C. B."

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered to introduce in evidence the treasurer's tax deed, issued to Thomas Bryant to this property December 1st, 1880, and recorded December 2nd, 1880, in book 33, page 469, of records of Douglas county, Nebraska.

To which counsel for defendant Frost objects for the reason — incompetent and improper to accumulate deeds, one deed upon

another, it being the duty of Bryant to pay the taxes without suffering it to go to sale, and for the further reason that it does not show that the entire lots was the smallest portion on which the taxes could have been made, and for the further reason that from the proof already in evidence that there was no proper notice served
269 upon the occupant, and for the further reason that there is no proper description of the property. To which counsel for defendant Spitly makes the same objections to the offering of said deed, and, in addition thereto, that there is no proof of the assignment of the certificate to whom this deed issued; secondly, the deed has not the seal of the county treasurer; thirdly, there is an interlineation in the deed unexplained, and it is objected to, its introduction, until the words "one dollar in hand paid" are explained.

C. S. MONTGOMERY, a witness on behalf of Thomas Bryant, complainant in the cross-bill, being first duly sworn, testified as follows:

In regard to the interlineation of that deed, I had the deed issued, and the interlineation was made by the county treasurer, who refused to execute the deed unless the interlineation was made. It was made before the execution of the deed. He is a peculiar kind of fellow and has his own ideas about things, and would not issue it unless the interlineation was made.

By Mr. ESTABROOK, on behalf of defendant Frost:

Int. 1. You say you had this deed made?
Ans. I had it issued for Mr. Bryant.
Int. 2. Who issued the tax deed for lot 4, block 52?
Ans. He issued that instrument.
Int. 3. You claim, too, a deed for lot 3, block 52?
Ans. I claim it to be what it shows on its face.
Int. 4. You wrote lots 3 and 4, block 52?
Ans. Yes, sir.
Int. 5. How do you know it is in the city of Omaha?
Ans. I know it by the fact of the controversy in this suit and the records, etc.
Int. 6. What records do you know it from?
Ans. The records of the city.
270 Int. 7. Suppose you were asked to levy on lots 3 and 4, block 52, where would you go to levy?

Objected to as irrelevant, incompetent, and not proper cross-examination. Question withdrawn.

Int. 8. Presuming that you were acting as sheriff of this county, could you, from that description, find these lots?
Ans. Yes, sir; I think I could. Every city map puts these lots down.
Int. 8. Is there any city maps?
Ans. Yes, sir; several made by parties for use.
Int. 9. How about the maps of Boggs & Hill; did they have any authority to make them for the city?
Ans. I don't know about that. Then, again, these lots were re-

ferred to when Durant got his title as being so and so—as being issued by somebody.

Int. 10. You say several maps; is it not a matter of fact that different maps differ? Are the lots the same on the different maps?

Ans. I never examined particularly.

Int. 11. Don't you know that on some of these maps the same lots front different ways?

Ans. Yes; I know that.

Int. 12. Is that the only record proof you have?

Ans. I told you of further proof. When this property was sold it was described so and so, according to somebody's map.

Int. 13. Is there, that you know, a plat recorded and filed of the city of Omaha?

Ans. I don't know that. I never examined for the regular recorded plat of the city. I desire to testify further that, so far as these special lots are concerned, they have had for many years a specific location, which could not be doubted and which anybody seeking for them could go there and find them.

Int. 14. There is no means of proving when you have found them, is there?

271 Ans. Yes, sir; they can refer back to the original parties; I don't know who they were. It seems to me that there was a plat made by some Council Bluffs parties and lithographed by a man by the name of Jones; that is all I know about it. That is all I have to say.

Mr. Montgomery, on behalf of Thomas Bryant, complainant in the cross-bill, offered in evidence, as it appears here, that these lots were sold for taxes of 1878 to one J. W. Gannett, a certificate issued by the treasurer of Douglas county, Nebraska, to Thomas Bryant, showing that he redeemed these lots from that sale to Gannett on May 2nd, 1880, for the purpose of showing the date and amount of such redemption.

Objected to by Mr. Estabrook, on the part of defendant Frost, on the ground of incompetency to establish title, and as immaterial under the pleadings.

Mr. Redick, on behalf of defendant Spitly, makes the same objection; and, further, that it is not the best evidence of money paid in redemption.

Messrs. Spitly and Frost, by their attorneys, mak*ing* the following additional objections in case — fails under the claim lien by the complainant Bryant in the cross-bill: First, that all the taxes paid five years prior to the bringing of this suit are outlawed under the law of 1877; second, that under the law of 1879, in order to obtain a lien each amount must be specifically numbered and form a separate cause of action; third, that the law of 1879 takes away all right to enforce a lien, the title having failed, except the right had accrued prior to the passage of that act.

The complainant Spitly makes the following objections: First, that this court has no jurisdiction to maintain this cross-bill; second, that all taxes that have been offered to be produced by the complainant in the cross-bill have long since ceased to be a lien upon the premises.

272 EXHIBIT "A, C. B."

Treasurer's Tax Deed.

Whereas Thomas Bryant did, on the 13th day of September, A. D. 1875, produce to the undersigned, A. C. Althaus, treasurer of the county of Douglas, in the State of Nebraska, a certificate of purchase in writing, bearing date the 3rd day of September, 1873, signed by E. C. McShane, who at the last-mentioned date was treasurer of said county, from which it appears that Thomas Bryant did, on the 3rd day of September, 1873, purchase at public sale, in said county, the tract, parcel, or lot of land lastly in this indenture described, which said real estate was sold to Thomas Bryant for the sum of two hundred eighty-seven & $\frac{88}{100}$ dollars, that being the amount due on the following tract or lot of land returned delinquent for the non-payment of taxes, costs, and charges for the year 1872, to wit, lot five (5), in block seventy-four (74); lot one (1), in block fifty-seven (57); lot four (4), in block fifty-two (52), Omaha city, Douglas county, Nebraska;

And it appearing that the said Thomas Bryant is the legal owner of said certificate of purchase, and that the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said Thomas Bryant having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs, and charges as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year 1872, and that said lands had been legally advertised for sale for taxes, and were sold on the 3rd day of September, 1873:

Now, therefore, this indenture, made this 13th day of September, 1875, between the State of Nebraska, by A. C. Althaus, treasurer of said county of Douglas, of the first part, and Thomas Bryant,
of the second part, witnesseth: That the said party of the
273 first part, for and in consideration of the premises and the
sum of one dollar in hand paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell and convey, unto the said party of the second part, his heirs and assigns, forever the tract or parcel of land mentioned in said certificate and described as follows, to wit, lot five (5), in block seventy-four (74); lot one (1), in block fifty-seven (57); lot four (4), in block fifty-two (52), Omaha city, Douglas county, State of Nebraska:

To have and to hold said mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second

part in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In witness whereof the said A. C. Althaus, treasurer of said county of Douglas, has hereunto set his hand this 13th day of September, A. D. 1875.

A. C. ALTHAUS.
Treasurer of Douglas County, State of Nebraska.

Attest: [SEAL.] LEWIS S. REED,
County Clerk.

In presence of—
CEPHAS WOOD.

STATE OF NEBRASKA, }
County of Douglas, } ss:

On this 15th day of September, A. D. 1875, before me, county clerk in and for said county, personally appeared the above-named A. C. Althaus, treasurer of Douglas county, Nebraska, and acknowledged the execution of the foregoing conveyance to be his voluntary act and deed as such treasurer; and I further certify that I know the said A. C. Althaus to be the identical person described in and who executed the above deed, as grantor, and who is treasurer of said county of Douglas, in the State of Nebraska.

In witness whereof I have hereunto set my hand and official seal the date aforesaid.

LEWIS REED, [SEAL.]
County Clerk.

Said exhibit is endorsed as follows, to wit: A. C. Althaus, county treasurer, to Thomas Bryant. Tax deed. Ex. A, C. B. Entered in numerical index of deeds September 15th, 1875. Lewis S.
274 Reed, county clerk. Received for record September 15th, 1875, at 11½ o'clock a. m., and recorded in book 18 of deeds, at page 590. Lewis S. Reed, county clerk, Douglas county, Nebraska

EXHIBIT "B, C. B."

A. C. Althaus, Treasurer, to Thomas Bryant.

Whereas Thomas Bryant did, on the 20th day of December, A. D. 1875, produce to the undersigned, A. C. Althaus, treasurer of the county of Douglas, in the State of Nebraska, certificates of purchase, in writing, bearing date on the 15th day of December, 1873, signed by A. C. Althaus, who at the last-mentioned date was treasurer of said county, from which it appears that Thomas Bryant did, on the 15th day of December, 1873, purchase, at private sale, in said county, the tracts, parcels, or lots of land lastly in this indenture described, which said real estate was sold to Thomas Bryant for the sum of six hundred ten & $\frac{83}{100}$ dollars, that being the amount due on the following tracts or lots of land returned delinquent for the non-payment of taxes, costs, and charges for the year 1872, to wit, lot three (3), in

block forty-three (43); lot three (3), in block fifty-two (52); lot two (2), in block sixty-two (62); lot seven (7), in block one hundred and thirty-three (133); lot eight (8), in block one hundred and thirty-three (133), east; one-third of lot eight (8), in block one hundred and thirty-seven, all in the city of Omaha, county of Douglas, and State of Nebraska;

And it appearing that the said Thomas Bryant is the legal owner of said certificates of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said Thomas Bryant having demanded a deed for the tracts of land mentioned in said certificates, and which was the least quantity of the tracts above described that would sell for the amount due thereon
275 for taxes, costs, and charges, as above specified, and it appearing that said lands were legally liable for taxes, and had been duly assessed and properly charged on the tax book or duplicate for the year 1872, and that said lands had been legally advertised for sale for taxes, and were sold on the 15th day of December, 1873:

Now, therefore, this indenture, made this 20th day of December, 1875, between the State of Nebraska, by A. C. Althaus, treasurer of said county of Douglas, of the first part, and Thomas Bryant, of the second part, witnesseth: That the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, forever the tracts or parcels of land mentioned in said certificates and described as follows, to wit, lot three (3), in block forty-three (43); lot three (3), in block fifty-two (52); lot two (2), in block sixty-two (62); lot seven (7), in block one hundred and thirty-three (133); lot eight (8), in block one hundred and thirty-three (133), east; one-third of lot eight (8), in block one hundred and thirty-seven (137), all in the city of Omaha, county of Douglas, and State of Nebraska:

To have and to hold said mentioned tracts or parcels of land, with the appurtenances thereto belonging, to the said party of the second part in as full and ample a manner as the said treasurer of said county is empowered by law to sell the same.

In witness whereof the said A. C. Althaus, treasurer of said county of Douglas, has hereunto set his hand this 20th day of December, A. D. 1875.

A. C. ALTHAUS,
Treasurer of Douglas County, State of Nebraska.

Attest: [SEAL.] LEWIS S. REED,
County Clerk.

In the presence of—
CEPHAS WOOD.

THE STATE OF NEBRASKA, *County of Douglas:*

On this twentieth day of December, A. D. 1875, before me, county clerk in and for said county, personally appeared the above-named

A. C. Althaus, treasurer of Douglas county, Nebraska, and
276 acknowledged the execution of the foregoing conveyance to be his voluntary act and deed as such treasurer; and I further certify that I know the said A. C. Althaus to be the identical person described in and who executed the above deed as grantor, and who is treasurer of said county of Douglas, in the State of Nebraska.

In witness whereof I have hereunto set my hand and official seal the date aforesaid.

[SEAL.] LEWIS S. REED,
County Clerk.

[Endorsed:] Entered in numerical index of deeds December 20th, 1875. Lewis S. Reed, county clerk. Recorded December 20th, 1875, at 2¼ o'clock p. m. Lewis S. Reed, county clerk.

STATE OF NEBRASKA } ss:
Douglas County, }

I, John R. Manchester, county clerk and *ex-officio* recorder of said county, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county of a deed recorded in book No. 19, at page 349.

In testimony whereof I hereunto set my hand and official seal this 2nd day of April, A. D. 1881.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

EXHIBIT "C, C. B."

County Treasurer's Certificate of Tax Sale.

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, A. C. Althaus, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 3, in block 52, in Omaha city, Nebraska, was, on the 15th day of December, A. D. 1873, duly sold by me in the manner provided by law, at private sale, for the delinquent taxes for the year 1872 upon lot 3, in block 52, in Omaha city, Nebraska, for State, county, & city —, amounting to sixty-two & $\frac{80}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to Thomas Bryant for the sum of sixty-two
277 & $\frac{80}{100}$ dollars, he being the highest bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said Thomas Bryant, — heirs or assigns, will be entitled to a deed therefor on and after the fifteenth day of December, 1875, on surrender of this certificate.

In witness whereof I have hereunto set my hand this fifteenth day of December, 1873.

A. C. ALTHAUS,
Treasurer of Douglas County, State of Nebraska.

[Written across face:] Deed given December 20th, 1875.

[Written on margin:] Offered at public sale for taxes but not sold for want of bidders.

Said exhibit is endorsed as follows: 3–52. Bryant. Ex. C, C. B. Filed Dec. 20, 1875. Lewis S. Reed, county clerk.

STATE OF NEBRASKA, } ss:
Douglas County. }

I, John R. Manchester, county clerk, do hereby certify that this is a full and correct copy of a tax sale certificate now on file in the county clerk's office of said county.

In testimony whereof I hereunto set my hand and official seal this 4th day of April, A. D. 1881.

JOHN R. MANCHESTER,
County Clerk.

EXHIBIT "D, C. B."

County Treasurer's Certificate of Tax Sale.

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, A. C. Althaus, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 3, block 52, Omaha, was on the ninth day of September, A. D. 1874, duly sold by me, in the manner provided by law, at public sale, for the delinquent county, State, & city taxes for the year 1873 upon lot 3, block 52, Omaha, amounting to seventy-six & $\frac{46}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to Thomas Bryant for the sum of seventy-six & $\frac{46}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said Thomas Bryant, his heirs or assigns, will be entitled to a deed therefor on and after the 9th day of Sept., 1876, on surrender of this certificate.

278 In witness whereof I have hereunto set my hand this ninth day of Sept., 1874.

A. C. ALTHAUS,
Treasurer of Douglas County, State of Nebraska.

EXHIBIT "E, C. B."

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, A. C. Althaus, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 4, block 52, Omaha, was on the ninth day of Sep., A. D. 1874, duly sold by me in the manner provided by law at public sale for the delinquent State, Co., and city taxes for the year 1873 upon lot 4, block 52, Omaha, amounting to one hundred seventy-seven & $\frac{44}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to Thomas Bryant for the sum of one hundred seventy-seven & $\frac{44}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said Thomas Bryant, his heirs or assigns, will be entitled to a deed therefor on and after the ninth day of Sept., 1876, upon surrender of this certificate.

In witness whereof I have hereunto set my hand this ninth day of Sept., 1874.

A. C. ALTHAUS,
Treasurer of Douglas County, State of Nebraska.

EXHIBIT "F, C. B."

Treasurer's Tax Deed.

Whereas Thomas Bryant did, on the twenty-second day of January, A. D. 1878, produce to the undersigned, Wm. F. Heins, treasurer of the county of Douglas, in the State of Nebraska, a certificate of purchase in writing, bearing date on the 23rd day of December, 1875, signed by A. C. Althaus, who at the last-mentioned date was treasurer of said county, from which it appears that Emily Satterthwait did, on the twenty-third day of December, 1875, purchase at private sale, in the manner provided by law, in said county, the tract, parcel, or lot of land lastly in this indenture described, which
279 said real estate was sold to Emily Satterthwait, in the manner provided by law, for the sum of one hundred and fifty-six & $\frac{3}{100}$ dollars, that being the amount due on the following tract or lot of land returned delinquent for the non-payment of State & county taxes, costs, and charges for the year 1871, to wit, lot four (4), in block fifty-two (52), in Omaha city, Douglas county, Nebraska;

And it appearing that the said Thomas Bryant is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said Thomas Bryant having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs, and charges, as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year 1871,

and that said lands had been legally advertised, and were sold on the twenty-third day of December, 1875:

Now, therefore, this indenture, made this twenty-second day of January, 1878, between the State of Nebraska, by Wm. F. Heins, treasurer of the county of Douglas, of the first part, and Thomas Bryant, of the second part, witnesseth: That the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns, forever the tract or parcel of land mentioned in said certificate and described as follows, to wit, lot four (4), in block fifty-two (52), in Omaha city, Douglas county, Nebraska:

To have and to hold said mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, and to his heirs and assigns, forever in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

280 In testimony whereof the said Wm. F. Heins, treasurer of said county of Douglas, has hereunto set his hand and seal this twenty-second day of January, A. D. 1878.

WM. F. HEINS,
Treasurer of Douglas County, State of Nebraska.

Attest: [SEAL.] JOHN R. MANCHESTER,
County Clerk.

In presence of—
W. P. HENNESY.

THE STATE OF NEBRASKA, } ss:
County of Douglas, }

On this 24th day of January, A. D. 1878, before me, a notary public in and for said county, personally appeared the above-named Wm. F. Heins and acknowledged the execution of the foregoing conveyance to be his voluntary act and deed as such treasurer; and I further certify that I know the said Wm. F. Heins to be the identical person described in and who executed the above deed as grantor, and who is treasurer of said county of Douglas, in the State of Nebraska.

In witness whereof I have hereunto set my hand and seal the date aforesaid.

[SEAL.] JOHN R. MANCHESTER,
Notary Public.

Said exhibit is endorsed as follows, to wit: Wm. F. Heins, county treasurer to Thomas Bryant. Tax deed. Entered in numerical index of deeds January 24, 1878. John R. Manchester, county clerk. Received for record January 24, 1878, at 10½ o'clock a. m., and recorded in book 23 of deeds, at page 620. John R. Manchester, county clerk, Douglas county, Nebraska.

"EXHIBIT G, C. B."

County Treasurer's Certificate of Tax Sale.

STATE OF NEBRASKA, }
County of Douglas, } ss:

I, A. C. Althaus, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 4, block 52, Omaha city, was, on the 23rd day of December, A. D. 1875, duly sold by me in the manner provided by law, at private sale, for the delinquent State & county taxes for the year 1871 upon the same, amounting to one
281 hundred fifty-six & $\frac{3}{100}$ dollars, including interest and penalty thereon, and the costs allowed by law, to Emily Satterthwait for the sum of one hundred and fifty-six & $\frac{3}{100}$ dollars, she being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law, the said Emily Satterthwait, — heirs or assigns, will be entitled to a deed therefor on and after the twenty-third day of December, 1877, on surrender of this certificate.

In witness whereof I have hereunto set my hand this twenty-third day of December, 1875.

A. C. ALTHAUS.
Treasurer of Douglas County, State of Nebraska.

[On margin:] Offered at public sale for taxes, but not sold for want of bidders. Deed issued to Thomas Bryant January 22, 1878.

Said exhibit is endorsed as follows, to wit: Emily Satterthwait for tax of 1871, 4–52; bo't Dec. 23, 75. Transferred to Thomas Bryant. Emily Satterthwait. Filed January 24, 1878. John R. Manchester, county clerk.

STATE OF NEBRASKA, }
Douglas County, } ss:

I, John R. Manchester, county clerk, do hereby certify that this is a full and correct copy of a tax-sale certificate now on file in the county clerk's office of said county.

In testimony whereof I hereunto set my hand and official seal this 4th day of April, A. D. 1881.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

EXHIBIT "H, C. B."

Statement of City Taxes Paid on Lots 3 & 4, *Block* 52, *Omaha, from* 1867 *to* 1879.

Tax year.	Date of rec'pt.	Lot.	Blk.	By whom paid.	Am't of tax.	Am't of interest.	Total.
					$ *Cts.*	$ *Cts.*	$ *Cts.*
1874	June 4, 1875	3	52	Thos. Bryant	30	60	30 60
"	" "	4	52	do.	66	1 32	67 32
1875	July 14, 1876	3	52	do.	33 60	1 01	34 61
"	Ap'l 27, "	4	52	E. Satterthwait	79 20		79 20
1876	July 31, 1877	3	52	Thos. Bryant	21 60	65	22 25
"	" "	4	52	do.	50 40	1 51	51 91
					$280 80	$5 09	$285 89

To whom assessed:

1874. No name.
1875. T. C. Durant.
1876. Do.

STATE OF NEBRASKA, }
City of Omaha, } *ss:*

282 I, Sam'l G. Mallett, treasurer of said city of Omaha, do hereby certify that the above is a true record copy of the records of this office of the tax and interest paid and the whole thereof in relation to the facts above stated.

S. G. MALLETT,
City Treas.

COUNTY TREASURER'S OFFICE, DOUGLAS COUNTY,
OMAHA, NEB., *Ap'l* 2, '81.

I hereby certify that the following is a correct statement of tax sales, dates, &c., appearing on the records of this office against lots 3 and 4, b'k 52, Omaha, to the best of my knowledge:

Lot 3:

1872. Assessed to —— ——; sold Dec. 15th, 1873, to Thomas Bryant for Co. and city taxes for $62.80; tax deed given Dec. 20th, 1875.

1873. Assessed to —— ——; sold Sept. 9, 1874, to Thomas Bryant for Co. and city tax for $76.46.

1874. Assessed to —— ——; paid by Bryant, as holder of tax title, June 4, '75, Co. and city; amount, $61.09.

1875. Assessed to T. C. Durant; paid by Bryant, as holder of tax

title—county tax, July 10, '76, $31.39; city do. do., July 14, '76, $34.61.

1876. Assessed to T. C. Durant; paid by Bryant, as holder of tax title, Co. and city tax, July 31, '77, $46.73.

1877. Assessed to T. C. Durant; sold to J. C. Noyes Nov. 6th, 1878, for Co. & city tax, $45.60; tax deed issued to Bryant Dec. 1, '80.

1878. Assessed to U. P. R. R. Co.; sold to J. W. Gannett Jan'y 7, 1880, for Co. & city, for $52.58, and redeemed by Bryant May 3, 1880, for $56.20.

1879. Assessed to U. P. R. R. Co.; sold to J. C. Noyes Dec. 24, '81, for Co. & city tax, $53.65.

1880. Assessed to J. I. Redick; tax now due.

Lot 4:

1871. Assessed to —— ——; sold to E. Satterthwait Dec. 23rd, '75, for county tax, for $156.03; deed issued to Thomas Bryant Jan'y 22d, '78.

283 1872. Assessed to —— ——; sold to Bryant Sept. 3, 1873, for Co. & city tax, $172.58; deed given Sept. 13th, 1875.

1873. Assessed to —— ——; sold to Bryant Sept. 19, '74, for Co. & city tax, $177.44.

1874. Assessed to —— ——; paid by Bryant, Co. & city, June 4, '75, $134.39.

1875. Assessed to T. C. Durant; paid by Bryant, Co. & city, Apr'l 29, '76, $151.72.

1876. Assessed to " " " " July 31, '77, $109.03.

1877. Assessed to " sold to J. C. Noyes for Co. & city, Nov. 6, '78, for $104.67; deed issued to Bryant Dec. 1st, 1880.

1878. Assessed to U. P. R. R. Co.; sold to J. W. Gannett Jan'y 7, 1880, for Co. & city, for $120.76, and redeemed by Bryant May 3, '80, for $128.55.

1879. Assessed to U. P. R. R. Co.; sold to J. C. Noyes Dec. 24, 81, for Co. & city, for $118.56.

1880. Assessed to J. I. Redick; tax now due.

The within-named amounts are the original figures paid by purchaser, without interest from date of payment.

W. F. HEINS, *Co. Treas.*

EXHIBIT "I, C. B."

COUNTY TREASURER'S OFFICE,
DOUGLAS COUNTY, NEBRASKA,
OMAHA, *April 4th*, 1881.

Statement of County and State Taxes Paid on Lots 3 & 4, *in Block* 52, *Omaha, Neb., from* 1867 *to* 1871, *Inclusive.*

Year.	Date of receipt.	Lot.	Bl'k.	By whom paid.	Taxes & interest.
1867	Nov. 15, '76	3	52	T. Bryant, holder of tax title	$181 90
"	"	4	52	"	
1868	"	3	52	"	102 70
"	"	4	52	"	
1869	"	3	52	"	43 35
"	"	4	52	"	252 43
1870	"	3	52	"	68 82
"	"	4	52	"	210 09
1871	"	3	52	"	56 75

284 To whom assessed:

1867. No name.
1868. Do.
1869. U. P. R. R.
1870. T. C. Durant.
1871. No name.

STATE OF NEBRASKA, *County of Douglas:*

I hereby certify that the above and foregoing is a true copy of the records in my office relating to the facts and matters therein stated and indicated.

WM. F. HEINS,
County Treasurer of Douglas County, Nebraska.

EXHIBIT "J, C. B."

County Treasurer's Certificate of Tax Sale 355.

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

Wm. F. Heins, county treasurer, to J. C. Noyes.

I, William F. Heins, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 3, bl'k 52, in the city of Omaha, was, on the sixth day of November, A. D. 1878, duly sold by me, in manner provided by law, at public sale at county treasurer's office, for the delinquent State, Co., and city taxes for the

year 1877 upon the same, amounting to forty-five $\frac{60}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to J. C. Noyes for the sum of forty-five $\frac{60}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said J. C. Noyes, — heirs or assigns, will be entitled to a deed therefor on and after the sixth day of November, 1880, on surrender of this certificate.

In witness whereof I have hereunto set my hand this sixth day of November, 1878.

WM. F. HEINS,
Treasurer of Douglas County, State of Nebraska.

For value received, I assign the within certificate to Thos. Bryant.
J. C. NOYES.

285 *County Treasurer's Certificate of Sale* 356.

THE STATE OF NEBRASKA, } ss:
County of Douglas, }

I, William F. Heins, treasurer of said county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 4, bl'k 52, in Omaha city, was, on the sixth day of November, A. D. 1878, duly sold by me, in the manner provided by law, at public sale at county treasurer's office, for the delinquent State, Co., and city taxes for the year 1877, upon the same, amounting to one hundred & four $\frac{67}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to J. C. Noyes for the sum of one hundred and four $\frac{67}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said J. C. Noyes, his heirs or assigns, will be entitled to a deed therefor on and after the sixth day of November, A. D. 1880, on surrender of this certificate.

In witness whereof I have hereunto set my hand this sixth day of November, 1878.

WM. F. HEINS,
Treasurer of Douglas County, State of Nebraska.

For value received, I assign the within certificate to Thos. Bryant.
J. C. NOYES.

Notice.

To G. W. Frost, occupant or owner of lot three (3) and lot four (4), in block fifty-two (52), in the city of Omaha, Douglas county, Nebraska:

You are hereby notified that the above-described real estate was, on the 6th day of November, 1878, sold at public auction to J. C. Noyes for the delinquent taxes of 1877 thereon, for which taxes said real estate was taxed in the name of T. C. Durant, and that the time of redemption from sale will expire November 7th, 1880, and that

unless said real estate is redeemed from said sale on or before the 7th day of November, 1880, a deed will be issued for said real estate to Thos. Durant or his assigns.

THOS. BRYANT.

286 STATE OF NEBRASKA, } ss:
Douglas County, }

J. B. Whittier, being first duly sworn, says that he is the agent of Thos. Bryant, and was his agent on July 29th, 1880; that Thomas Bryant was and is the assignee of J. C. Noyes as to the tax certificate issued to said Noyes on the above-described tax sales, which certificates are hereto attached; that on July 29th, 1880, affiant served the above notice personally on said G. W. Frost by delivering to him a true copy thereof; that at said time said G. W. Frost was and now is the occupant of said above-described lots of real estate; that said T. C. Durant, in whose name said real estate was taxed as above stated, could not then and cannot now, after diligent inquiry and search, be found in Douglas county, Nebraska.

J. B. WHITTIER.

Signed in my presence and sworn to before me this 30th day of November, 1880.

[SEAL.] LEWIS A. GROFF,
Notary Public in and for Douglas Co., Neb.

[Endorsed:] Entered in numerical index of deeds December 2nd, 1880. John R. Manchester, county clerk. Recorded December 2nd, 1880, at 3½ o'clock p. m.

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, John R. Manchester, county clerk of said county, do hereby certify that the above and foregoing is a full and correct transcript from the records of said county of an instrument recorded in book 33 of deeds on pages 467, 468, & 469.

In testimony whereof I hereunto set my hand and official seal this 5th day of April, A. D. 1881.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

287 EXHIBIT "K, C. B."

Treasurer's Tax Deed.

STATE OF NEBRASKA, } ss:
Douglas County, }

Whereas at a public sale of real estate for the non-payment of taxes made in the county aforesaid on the sixth day of November, A. D. 1878, the following described real estate was sold, to wit: Lot three and lot four, both in block fifty-two (52), situated in the city of Omaha, in the county of Douglas, in the State of Nebraska, for the delinquent taxes of 1877 thereon; and

Whereas each lot was sold separately for the separate amount due on each, and were sold to J. C. Noyes, who was the highest and best bidder therefor, at the treasurer's office in said county; and

Whereas said J. C. Noyes has assigned the certificates of said sale to Thomas Bryant, who owns them; and

Whereas the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Nebraska necessary to entitle him to a deed of said real estate:

Now, therefore, know ye that I, Wm. F. Heins, county treasurer of said county of Douglas, in consideration of the premises and one dollar to me in hand paid, and by virtue of the statutes of the State of Nebraska in such cases provided, do hereby grant and convey unto Thomas Bryant, his heirs, and assigns, forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and the seal of our court this first day of December, A. D. 1880.

WM. F. HEINS, [SEAL.]
Treasurer of Douglas County, State of Nebraska.

In presence of—
JOHN RUSH.

STATE OF NEBRASKA, }
Douglas County, } *ss:*

On this first day of December, A. D. 1880, before me, the undersigned, county clerk, duly elected and qualified for and residing in and for said county, personally appeared the above-named
288 Wm. F. Heins, treasurer of said county, and acknowledged the foregoing instrument, and also the execution thereof, to be his voluntary act and deed as such treasurer; and I further certify that I know the said Wm. F. Heins, who executed the above deed as grantor, to be the identical person described therein and to be the treasurer of said county of Douglas, in the State of Nebraska.

In witness whereof I have hereunto set my hand and the seal of said county, my official seal, the date aforesaid.

[SEAL.] JOHN R. MANCHESTER,
County Clerk in and for Douglas County, Nebraska.

Said exhibit is endorsed as follows, to wit: Tax deed. Wm. F. Heins, treasurer of Douglas county, State of Nebraska, to Thomas Bryant. State of Nebraska, Douglas county, *ss:* Filed for record in the clerk's office of said county the 2nd day of December, 1880, at 3 o'clock and 30 minutes p. m., and recorded in book 33 of deeds, on page 469. John R. Manchester, county clerk, by H. T. Leavitt, deputy. Entered in numerical index of deeds December 2nd, 1880. John R. Manchester, county clerk.

EXHIBIT "L, C. B."

184.75. Cert. 25. No. 613.

TREASURER'S OFFICE, DOUGLAS COUNTY,
OMAHA, NEB., *May 3rd*, 1880.

This is to certify that I have this day received of Thomas Bryant the sum of one hundred eighty-four $\frac{65}{100}$ dollars as redemption on lots 3 & 4, in block 52, Omaha city—redemption on lot 3-- $56 20
" " 4-- 128 55

$184 75

Douglas county, State of Nebraska, which were sold to J. W. Gannett for the delinquent State, county, and city tax for the year 1878.

(Original.)

WM. F. HEINS,
County Treasurer.
JOHN RUSH, *Deputy.*

289 Mr. MONTGOMERY, a witness on behalf of complainant in cross-bill of Bryant, being first duly sworn, testified as follows:

I wish to testify that I was doing business for Mr. Bryant during the year 1880, and that all that summer, until in the fall, Mr. Bryant was in Wisconsin, and I had correspondence with him, and that he could not have served this notice upon Frost, because he was not here to do it.

Cross-examination by Mr. REDICK:

Int. 1. When did he return?
Ans. I can't give the exact date.
Int. 2. Can you give the month?
Ans. I could if I were at my office. Some time last fall.
Int. 3. What time in the fall?
Ans. I think it was in September.
Int. 4. Ain't it a fact that he was off and on, back and forth here?
Ans. I don't think he was here after he went until he went to Wisconsin.
Int. 5. Will you swear he was not?
Ans. Of course I did not follow him. I know I had letters from him all the time from Wisconsin.

J. B. WHITTIER, a witness on behalf of Thomas Bryant, the complainant in the cross-bill, being first duly sworn, testified as follows:

Examined by Mr. WEBSTER:

Int. 1. What is your name, age, occupation, and place of residence?
Ans. J. B. Whittier; age, 39; am engaged in the land business at present, and reside in Wisconsin.
Int. 2. Please read that notice and affidavit first (hands witness

paper) and then let me ask you a question or two. Are you acquainted with George W. Frost?

Ans. I am.

290 Int. 3. Did you ever have anything to do with this tax title claim of Thomas Bryant on the Frost property or the property occupied by him—lots three and four, in block fifty-two?

Ans. Nothing further than serving notice on him.

Int. 4. When did you serve notice upon him, what was it about, and what for?

Ans. The notice was that there would be a tax deed executed upon it.

Int. 5. You have just read that notice; state whether or not you served such notice upon defendant Frost?

Ans. Yes, sir; I served the notice upon him.

Int. 6. What kind of a notice was it?

Ans. It was a notice that there would be a deed taken out at such a time; that was the substance of it; I don't know but this is a copy of it; I can't remember the wording of it.

Int. 7. So far as you remember, that is a copy of it?

Ans. Yes, sir.

Int. 8. What day did you serve it?

Ans. I don't remember the exact date; I should think (examining the paper) that was the date.

Int. 9. What is the date?

Ans. 29th day of July; I served the notice in July—I think it was the last of July.

Int. 10. Did you serve the notice personally?

Ans. Yes, sir; at his house.

Cross-examination by Mr. REDICK on behalf of defendant Spitly:

Int. 11. Will you swear that this is a copy of that notice?

Ans. To the best of my knowledge; I could not swear.

Int. 12. You served another notice?

Ans. No, sir; that is all.

Mr. Redick, on behalf of defendant Spitly, objects to the testimony of Whittier and asks that it be stricken out; and also makes the further objection that this notice is not such a notice as is required by the statute.

291 Mr. Estabrook, on behalf of defendant Frost, makes the same and additional objections to the testimony of this witness because he cannot testify independent of memoranda.

Cross-examination by Mr. ESTABROOK:

Int. 13. Did you serve this notice yourself?

Ans. Yes, sir.

Int. 14. Personally?

Ans. Yes, sir.

Int. 15. Where; at his house?

Ans. Yes, sir.

Int. 16. With whom did you leave it?
Ans. With Mr. Frost. Yes, sir; and I am positive, because I went to serve it before the time.
Int. 17. Are you and Bryant in partnership?
Ans. No, sir.
Int. 18. Have no partnership in the buying of tax titles?
Ans. No, sir; none at all.

Redirect examination by Mr. MONTGOMERY:

Int. 19. In what relation to Mr. Bryant did you stand with reference to serving that notice?
Ans. I served it as Bryant's agent.

292 GEORGE W. FROST, a witness on behalf of Frost and Frost in the cross-bill of Bryant, being first duly sworn, testified as follows:

Here the complainant Spitly objects to Mr. Frost giving testimony in support of his and Mrs. Frost's cross-bill on the ground that Mrs. Frost is an improper party to the suit and cannot maintain her claim by the cross-bill, and the testimony given by the witness will be immaterial, and that the testimony offered in support of the homestead has been once tried and adjudicated by this court. Objection overruled. Exception taken.

Examined by Mr. WEBSTER:

Int. 1. How are these two lots in controversy located as to each other?
Ans. All in one enclosure; located on the corner of 21st and Chicago streets. The house stands on lot four, corner lot, and the other lot joins on the east; house on one lot, stable on the other.
Int. 2. You may state whether they are within the limits of the city of Omaha.
Ans. Yes, sir; within the limits of the city of Omaha.
Int. 3. You may state, Mr. Frost, whether or no at any time you have made any relinquishment of your homestead right in this property; and if so, in what way.

To which Mr. Redick objects as leading and incompetent and immaterial. Overruled. Exception taken.

Ans. Never.
Int. 4. You may state what claim, if any, you made, or you may state what has been your claim as to these lots as to your homestead rights thereon—what has been and is your claim as to your homestead rights to these lots.

Objected to as incompetent and immaterial, the same question having been adjudicated by this court. To the first objections master overrules; latter held under advisement.

293 Ans. I have claimed since 1866—since about the middle of 1866 I have claimed these two lots as my homestead; I

have property in different parts of the State, but have always claimed these lots as my homestead, and do now claim them as such.

The counsel for complainants Frost and wife now gives notice that he shall rely, in support of their cross-bill, on the testimony of Mr. Frost, whenever introduced, as to the homestead rights set up in his answer, and also upon the record proof introduced by Spitly, as well as also for defendant Frost.

Cross-examination by Mr. REDICK:

Int. 5. Did you ever occupy this property as the tenant of anybody?

Ans. Never; you know that.

Int. 6. At the time you got your decree and in the litigation in the State court, did not Judge Savage, in adjusting the account between you and the Credit Mobilier of America, charge you with the use of the property?

Ans. I think not.

Int. 7. Ain't it a fact that Byron Reed was a witness on that trial to show the rental value of that property?

Ans. I don't remember anything about it; I don't think he was.

Int. 8. Ain't it a fact that the court, in rendering that decree, charged you with the rental of the lots as so much borrowed money, in settling the account between you and the Credit Mobilier?

Ans. I don't think he did.

Int. 9. Will you swear it?

Ans. No, sir.

Int. 10. Did not the Credit Mobilier commence an action to put you out of the premises, in the county court?

Ans. Yes, sir; and it got beat.

Int. 11. And I defended you?

294 Ans. Yes; they commenced suit to nose around; they would have did it on their motion.

Int. 12. Ain't it a fact that you agreed with Durant to work for him for the first year for $1,500 and your house rent?

Objected to for the reason that it appears from the statement of counsel that the records will show and this is not the best evidence. Overruled. Exceptions taken.

Ans. No such arrangement was ever made; the arrangement was that he should pay my house rent while I occupied the house of Coons; but in regard to my house up here, no rental was fixed or anything said about it.

Int. 13. And you never was charged with rental by anybody?

Ans. No, sir; not that I know of.

Int. 14. In adjusting your claim, ain't it a fact that Judge Savage charged you with it?

Objected to. Objection sustained.

Int. 15. If it should turn out that Judge Savage charged you with rental up to the time you got your deed from the Credit Mobilier, wouldn't you then have been a tenant?

Objected to as immaterial and asking for a legal opinion. Sustained. Exceptions taken.

Int. 16. How long before the deed came from New York had you been down to New York seeing Durant?

Objected as not proper cross-examination. Overruled. Exceptions.

Ans. I don't know.
Int. 17. Give it as near as you can.
Ans. I can't remember.
Int. 18. Can you come within a year and a half?
Ans. I think I might—within six months.
Int. 19. As near as you can.
Ans. I left New York and was gone two or three weeks;
295 on my return I was sick; I was not out of the house for several weeks; I was not out for eight weeks.
Int. 20. When did you start?
Ans. I think some time in autumn.
Int. 21. Of 1876?
Ans. I could not tell; have no recollection when it was.
Int. 22. Can't tell the year?
Ans. I can only fix the time it was when I found——
Int. 23. I don't care about you fixing the time. What year was it?
Ans. I believe about 1876; I am not sure; I don't remember. I have been to New York so many times I can't remember that particular time.

GEORGE W. FROST, called by Spitly and himself in defense to the cross-bill of Thomas Bryant.

Examined by Mr. ESTABROOK:

Int. 1. Do you know this gentleman, Whittier, that just testified here?
Ans. I believe I have seen him.
Int. 2. Did he ever call at your house?
Ans. Yes, sir; he did.
Int. 3. On what occasion?
Ans. For the purpose of seeing a certificate or notice.
Int. 4. Did he ever call for the purpose of serving a notice?
Ans. Never.
Int. 5. At what time did he call for the purpose of serving a notice?
Ans. Some time in the months of October or November; some time after it was left at my house.
Int. 6. Who left the notice at your house?
Ans. Mr. Bryant; Thomas Bryant.
Int. 7. When?
Ans. I think the last of July.
296 Int. 8. Will you swear this man did not leave it?
Ans. Yes, sir.

Examined by Mr. REDICK for and on behalf of defendant Spitly:

Int. 9. State whether or not Whittier ever served the notice on you which he referred to to-day.

Ans. No; he did not. Mr. Bryant was at my house a dozen times. Mr. Bryant served the notice on me. Whittier came to see the notice. I don't know whether I showed it to him or not.

Cross-examination by Mr. MONTGOMERY:

Int. 10. You say that Mr. Bryant served the notice on you of the expiration of redemption?

Ans. Yes, sir.

Int. 11. You know Bryant, don't you.

Ans. I know him; he has been at my house a great many times.

Int. 12. You mean to swear positively you could not be mistaken about it; that Whittier did not serve that notice on you in the latter part of July?

Ans. I mean to swear that Bryant came to my house and pulled out of his outside pocket a paper and said he would serve a notice on me. I took that notice and showed it to Mr. Webster, and after that Whittier came to my house and wanted to see notice. I swear that to the best of my knowledge and belief.

Int. 13. You won't swear positively that Whittier did not serve it?

Ans. Only to the best of my knowledge and belief.

Int. 14. What kind of a looking man is Bryant?

Ans. Good looking man; somewhat better than Whittier, I should think.

Int. 15. Tall man?

Ans. Yes; somewhat.

Int. 16. What kind of whiskers did he wear?

297 Ans. I don't recollect.

Int. 17. Supposing that I should bring witnesses to show that Bryant was in Wisconsin at the time?

Ans. I don't swear as to just the time.

Int. 18. Supposing I show you letters showing that Mr. Bryant was in Wisconsin all of last summer up to September?

Ans. I would not alter my opinion.

Int. 19. Would you swear that Bryant served you with that notice last summer?

Ans. I would swear to the best of my recollection.

Int. 20. Was it not in the winter?

Ans. Some time before December.

Int. 21. Did the sun shine on that day?

Ans. I won't swear as to that.

Int. 22. You won't swear that Whittier did not come to your house and give you a notice on the 29th day of July?

Ans. I will swear that but one notice was served on me and Bryant served [it].

Int. 23. You think he is mistaken?

Ans. He is certainly very badly mistaken or else I am.

Int. 24. You can't tell when this notice was served on you?

Ans. No, sir; I can't tell; I don't remember.

Int. 25. You say Whittier came to see you after the notice was served on you; did you show it to him?

Ans. Yes, sir; I think I did; I don't remember.

Int. 26. Was that the notice that was served on you by Bryant that you showed Whittier?

Ans. Yes, sir; I think it was.

298 X A.

The Omaha Republican.

Notice of the sale of real property in Douglas county, Nebraska, for the taxes of the year 1877 remaining unpaid, including State and county and city taxes for the city of Omaha.

TREASURER'S OFFICE, DOUGLAS CO.,
OMAHA, NEB., *October* 5, 1878.

Notice is hereby given that, in compliance with the revenue laws of the State of Nebraska, I, William F. Heins, treasurer of Douglas county, State of Nebraska, on the first Monday in November, in the year 1878, being the 4th day of said month, between the hours of nine o'clock a. m. and four o'clock p. m., at county treasurer's office, in the court-house, in the city of Omaha, in Douglas county, State of Nebraska, will offer at public sale and sell all lands and real property in said county on which the taxes levied for the year 1877 remain unpaid. The said lands and real property will be sold to make therefrom the State and county taxes and city taxes for the city of Omaha levied and due on said property for the year 1877, together with such expenses, interests, and fees as may have accrued at the time of sale. The following is a description of the land and real property to be sold and the amount of taxes due on each description. I will adjourn said sale from day to day, between the same hours, until all said lands, lots, and blocks have been offered for sale.

WILLIAM F. HEINS,
Treasurer of Douglas County, Neb.

Omaha City.

Description.	Section or lot.	Town. or block.	State & Co. tax.	City tax.
* * * * * * *	*	*	*	*
	3	52	19 00	21 14
	4	52	44 00	48 95

STATE OF NEBRASKA, } ss:
Douglas County, }

C. E. Yost, being duly sworn, deposes and says that he is manager [of the] Omaha Daily Republican, a newspaper printed at Omaha, in the said county of Douglas; that the printed notice hereto attached was published in the said daily newspaper on Oct. 12th, 299 19th, and the 26th, 1878. The said newspaper was, during that time, in general circulation in the county of Douglas and State of Nebraska.

(Signed) C. E. YOST, *M'g'r.*

Sworn to and subscribed in my presence before me this 1 day of Nov., 1878.

E. E. BALCH,
Notary Public.

X B.

TREASURER'S OFFICE,
DOUGLAS COUNTY, NEBRASKA, *November 30th*, 1878.

To John R. Manchester, county clerk:

I certify that I have sold at public sale the following described property for delinquent taxes due thereon, to wit:

Date of sale.	Part of section or name of town.	Section or lot.	Town. or blk.	Range.	Acres.	Purchaser.	Amount sold.
							$ Cts.
Nov. 6, '78	.....	3	52	....	...	J. C. Noyes	45 60
" "	.....	4	52	....	...	" "	104 67

Witness my hand this 30th day of November, 1878.

WM. F. HEINS,
Co. Treasurer.

Filed November 30th, 1878, at 10 o'clock and 45 minutes a. m.

JOHN R. MANCHESTER,
County Clerk, Douglas County, Nebraska.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, John R. Manchester, county clerk for said county, do hereby certify that the foregoing is a full and correct copy of that part of the treasurer's return of property sold at public sale for delinquent taxes November 30th, 1878, as relates to lots 3 & 4, block 52, Omaha city, Nebraska, and filed in the county clerk's office November 30th, 1878, at 10 o'clock and 45 minutes a. m.

In testimony whereof I hereunto set my hand and official seal this 5th day of April, A. D. 1881.

JOHN R. MANCHESTER, [SEAL.]
County Clerk.

X C.

Assessment Return, Precinct X 6.

Offered to show—1, premises not described; 2, not assessed in name of real owner or occupant; 3, not in the form prescribed by statute. P. 905, G. S.

300 EXHIBIT "C."

Return of Lots in the City of Omaha, Precinct No. 6, Douglas County, Nebraska, for the Year 1877.

Owner's name.	Part of lot.	Lot.	Block.	Value.	Remarks.
				Dollars	
* * * * *	*	*	*	* *	
Catherine Boyd		1	52	1,250	
Do.		2		950	
T. C. Durant		3		950	
Do.		4		2,200	

I, Andrew H. Swendly, precinct assessor in and for Omaha precinct No. 6, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns, and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or invasion of any of the requirements of the law in the relation to the assessment of property for taxation.

A. H. SWENDBY.

Sworn to and subscribed before me this ninth day of April, A. D. 1877.

[SEAL.] LEWIS S. REED,
County Clerk.

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, John R. Manchester, county clerk of said county, do hereby certify that the foregoing is a full and correct copy of that part of the assessor's return of Omaha precinct No. 6 for the year 1877, relating to lots 1, 2, 3, & 4, block 52, Omaha city, Nebraska, and also of the assessor's oath attached to said return and now with the personal property blanks of said return.

301 In testimony whereof I hereunto set my hand and official seal this 5th day of April, A. D. 1881.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

Objected to by Thomas Bryant, complainant in cross-bill, because it is incompetent, immaterial, and irrelevant, and because it is inadmissible under the answers of Spitly and Frost.

X D.

List.

Offered to show—1, inadequate description of premises; 2, not listed in owner's name or in the name of occupant; 3, not in form provided by statute. G. S., p. 909.

Original, volume two: This book, with another book marked volume one, is the tax-list for Douglas county, Nebraska, for the year 1877.

THE STATE OF NEBRASKA, } ss:
County of Douglas, }

To the treasurer of said county:

SIR: You are hereby required to collect the taxes herein levied according to law.

Witness our hands and the seal of said county this 7th day of January, A. D. 1878.

B. P. KNIGHT,
FRED. DREXELL,
F. W. CORLISS,
County Commissioners of Douglas County, Nebraska.

Attest: JOHN R. MANCHESTER, [SEAL.]
County Clerk.

Objected to by Thomas Bryant, complainant in cross-bill, because it is incompetent, immaterial, irrelevant, and because it is inadmissible under the answers of Spitly and Frost.

Names.	Description of property.					Value.	State taxes.					County taxes.							Total.	Date of payment.			
	Part of section or name of town.	Sec. or lot	Town, or block.	Range.	Acres.		No. of school district.	General fund, 4.	Sinking fund, 75.	School fund, 1.	University fund, 35.	General fund, 6.	R. R. bond sinking fund, 3⅔.	R. R. bridge bond sinking fund, 2¼.	Bridge fund, 2.	District school.	Adjustment tax.	Log tax.		No. of receipt.	Month.	Day.	Year.
						Dollars Cts.													*Dol. Cts.*				
Catherine Boyd		1	52			1,250		5 00	1 09	1 25	47	7 50	4 38	2 81	2 50				25 00				
Do.		2				950		3 80	83	95	36	5 70	3 32	2 14	1 90				19 00				
T. C. Durant		3				950		3 80	83	95	36	5 70	3 32	2 14	1 90				19 00				
Do.		4				2,200		8 80	1 93	2 20	82	13 20	7 70	4 95	4 40				44 00				

303 STATE OF NEBRASKA, } ss:
Douglas County, }

I, John R. Manchester, county clerk in and for said county, do hereby certify that the foregoing is a correct copy of that part of the tax-list of Douglas county, Nebraska, for the year 1877 relating to lots 1, 2, 3, and 4, block 52, Omaha city, Nebraska, and also a correct copy of the order to the county treasurer of said county, directing him to collect said taxes according to law.

In testimony whereof I have hereunto set my hand and official seal this 5th day of April, A. D. 1881.

[SEAL.] JOHN R. MANCHESTER,
County Clerk.

304 Upon the back of said testimony appear endorsements in words [and] figures following, to wit: Number 8, G. Martin Spitly *vs.* George W. Frost *et al.* Testimony. Filed Oct. 26th, 1881. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 4th day of November, 1881, exceptions of George W. Frost, defendant, to master's report was filed in said case, which said exceptions are in words and figures following, to wit:

Exceptions of Defendant, George W. Frost, to Master's Report.

In the Circuit Court of the United States, District of Nebraska.

MARTIN SPITLEY
vs.
THOMAS C. DURANT, GEORGE W. FROST, *et al.*

Exceptions taken by the defendant, George W. Frost, to the report made herein by Dwight G. Hull, one of the masters of this court, to whom this case was referred by an order of this court, and which report bears date October 26th, 1881.

First exception. For that the said master, in his report, finds as a fact "that the order of sale issued to the marshal in the case in this court of Redick *vs.* Frost is lost, and the copy in the complete record, which is introduced in evidence, reads as follows: * * * 'The marshal to sell the judgment and costs.'"

Whereas the said master should have found that no order of sale was issued commanding the marshal to sell the lots in controversy, but that the order issued is in words and figures as follows:

"THE UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

"The President of the United States of America to the marshal of the district of Nebraska, Greeting:

"Whereas John I. Redick, on the 30th day of July 1877, sued out of the clerk's office of the circuit court of the United States
305 for said district an order of attachment, directed and de-

livered to the marshal of said district, requiring him to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of George W. Frost in said district not exempt by law from being appropriated to the payment of the plaintiff's claim, or so much thereof as would satisfy the plaintiff's claim, and said marshal returned said order executed by attaching the following property, to wit, one carriage, one green rep parlor set furniture, one green velvet parlor set furniture, one bed-room set furniture; also lots 3 and 4, in block 52, city of Omaha, Douglas county, Neb.; and afterwards such proceedings were had in said circuit court that at the November adjourned term thereof, A. D. 1877, the said plaintiff recovered a judgment against said defendant for the sum of $2,388.85, damages, and $80.50, the costs of said action:

"You are therefore commanded to proceed, as upon execution, to advertise and sell so much of the judgment and costs, with interest thereon from the 14th day of March, A. D. 1878, until paid, together with accruing costs, by virtue of this order, and do you make return of this order, together with your proceedings thereon, within sixty days from the date hereof.

"Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court, at Omaha, this first day of July, A. D. 1878, and of the Independence of the United States the 102nd year.

[SEAL.] "WATSON B. SMITH, *Clerk.*"

306 Second exception. That said master failed to find the facts as to the appraisement had under the order of sale, whereas he should have found that at said time said lots 3 and 4, in block 52, in the city of Omaha, were of the value of $6,000, yet the said marshal and the appraisers by him selected did not appraise said lots at their value in money and deduct from the real value of the lots and tenements the amount of all liens and incumbrances, for taxes or otherwise, which may have been a prior lien thereon, and specifically enumerate such liens to ascertain the real value of the interest of George W. Frost therein, but that said appraisement is as follows:

Appraisement.

In the Circuit Court of the United States for the District of Nebraska.

JOHN I. REDICK *vs.* GEORGE W. FROST.

The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy, and John Campbell and John B. Furay, two disinterested freeholders, residents of Douglas county, State and district of Nebraska, the said freeholders being duly sworn by said marshal to make a true and impartial appraisement of the defendant's interest in the following property ordered to be sold by virtue of an order for sale on attachment issued out of the circuit court of the United States in the above-entitled cause, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise said

property at its real value in money after deducting all prior liens thereon, to wit:

Omaha, Douglas Co., Nebraska:

Lot 3, in block 52	$50 00
Lot 4 ,in block 52	450 00
Total	$500 00

(The said defendant's only interest in said property, as appears by the records of Douglas Co., Neb., being that of occupancy and possession, we appraise the said interest as above.)

Given under our hands this 20th day of July, 1878.

WILLIAM DAILY,

307 *Marshal of the United States for the District of Neb.*,

By ELLIS L. BIERBOWER, *Deputy.*

JOHN CAMPBELL.

JOHN B. FURAY.

50 cents paid appraisers, each.

Third exception. That the master failed to find what liens or incumbrances were deducted by the appraisers in ascertaining the interest of George W. Frost in said lots, whereas he should have found as a fact that said appraisers deducted the outstanding tax titles on said lots in ascertaining the interest of George W. Frost therein.

Fourth exception. For that the master finds that the motion of George W. Frost for leave to amend his answer "should not be allowed, as the facts therein set forth are merely clerical errors and do not affect the merits of the controversy," whereas said master should have found that the facts therein set out are material, and that said amendment should be allowed.

Fifth exception. That the said master found as a conclusion of law, on the bill of Martin Spitly *vs.* George W. Frost *et al.*, "that by the sale of August 24th, 1878, and subsequent confirmation, and the payment by John I. Redick of the amount due from Frost to the Credit Mobilier of America on the decree hereinbefore set forth, the said John I. Redick acquired all the rights and interests of George W. Frost to lots 3 and 4, block 52, in the city of Omaha," whereas the master should have found that John I. Redick acquired no title to lots 3 and 4, block 52, in the city of Omaha, by reason of said pretended sale on said judgment in the case of Redick *vs.* Frost, and that complainant Spitley has no title to said lots, and that his bill should stand dismissed.

Sixth exception. That the master found as a second conclusion of law "that the confirmation of the sale in the case of Redick *vs.*

308 Frost cured all defects in proceedings therein and finally adjudicated the question of the homestead of said Frost, and all other questions which were or might have been raised therein," whereas he should have found that said lots were the homestead of Frost and his family and not subject to sale, and that the order of con-

firmation as found in the record did not confirm the sale as made in the case of Redick *vs.* Frost, and that said confirmation of sale did not cure the defects in the proceedings relative to the sale as made, and that said sale is null and void.

Seventh exception. That the master found that a decree should be entered quieting the title to lots 3 and 4, in block 52, in the complainant, Martin Spitley, whereas the master should have found that Martin Spitley, complainant, has no title in said lots 3 and 4, in block 52, in the city of Omaha, and that a decree should be entered dismissing the bill of Martin Spitley, complainant.

GEORGE W. FROST,
By WEBSTER & GAYLORD,
His Solicitors.

Upon the back of said exceptions of George W. Frost appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitley *vs.* Thomas C. Durant *et al.* Exceptions of George W. Frost, defendant, to master's report. Filed Nov. 4, 1881. Watson B. Smith, clerk. Webster & Gaylord, sol's for Frost.

Also, on the 4th day of Nov., 1881, exceptions of George W. Frost and Abby B. Frost, complainants in cross-bill, to master's report was filed in said case, which said exceptions are in words and figures following, to wit:

Exceptions of George W. Frost and Abby B. Frost, Complainants.

In the Circuit Court of the United States, District of Nebraska.

MARTIN SPITLEY *vs.* THOMAS C. DURANT, GEO. W. FROST, *et al.*

309 *In Cross-Bill to Master's Report.*

Exceptions taken by George W. Frost and Abby B. Frost, complainants in cross-bill, to the report made herein by Dwight G. Hull, one of the masters of this court, to whom this case was referred by an order of this court, and which report bears date Oct. 26th, 1881.

First exception. For that the said master in his report finds specially on said cross-bill of George W. Frost and Abby B. Frost that the original order of sale of Redick *vs.* Frost is lost, and the complete record thereof offered in proofs reads: * * * "The marshal to sell the judgment and costs."

Whereas the said master should have found that no order of sale was issued commanding the marshal to sell the lots in controversy, but that the order issued is in words and figures as follows:

"THE UNITED STATES OF AMERICA, }
"*District of Nebraska*, } ss:

"The President of the United States of America to the marshal of the district of Nebraska, Greeting:

"Whereas John I. Redick, on the 30th day of July, 1877, sued out of the clerk's office of the circuit court of the United States for said district an order of attachment, directed and delivered to the marshal of said district, requiring him to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of George W. Frost in said district not exempt by law from being appropriated to the payment of the plaintiff's claim, or so much thereof as would satisfy the plaintiff's claim, and said marshal returned said order executed by attaching the following property, to wit, one carriage, one green rep parlor set of furniture, one green velvet parlor set furniture, one bed-room set furniture; also lots 3 and 4, in block 52, in the city of Omaha, Douglas Co., Nebraska; and afterwards such proceedings were had in said circuit
310 court that at the Nov. adjourned term thereof, A. D. 1877, the said plaintiff recovered a judgment against said defendant for the sum of $2,388.85, damages, and $80.50, the costs of said action, you are therefore commanded to proceed as upon execution to advertise and sell so much of the judgment and costs, with interest thereon from the 14th day of March, A. D. 1878, until paid, together with accruing costs, by virtue of this order, and do you make return of this order, together with your proceedings thereon, within sixty days from the date hereof.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court, at Omaha, this 1st day of July, A. D. 1878, and of the Independence of the United States the 102nd year.

[SEAL.] "WATSON B. SMITH, *Clerk*."

Second exception. The said master failed to find the facts as to the appraisement had under the order of sale, whereas he should have found that at said time said lots 3 and 4, in block 52, in the city of Omaha, were of the value of $6,000, yet the said marshal and the appraisers by him selected did not appraise said lots at their value in money and deduct from the real value of the lots and tenements the amount of all liens and incumbrances, for taxes or otherwise, which may have been a prior lien thereon, and specifically enumerate such liens to ascertain the real value of the interest of George W. Frost therein, but that said appraisement is as follows:

"*Appraisement.*

"In the Circuit Court of the United States for the District of Nebraska.

"JOHN I. REDICK *vs.* GEORGE W. FROST.

"The undersigned, William Daily, marshal of the United States for the district of Nebraska, by Ellis L. Bierbower, deputy and John

Campbell and John B. Furay, two disinterested freeholders,
311 residents of Douglas county, State and district of Nebraska, the said freeholders being duly sworn by said marshal to make a true and impartial appraisement of the defendant's interest in the following property ordered to be sold by virtue of an order for sale on attachment issued out of the circuit court of the United States in the above-entitled case, and wherein John I. Redick is plaintiff and George W. Frost is defendant, do upon our oaths appraise said property at its real value in money, after deducting all prior liens thereon, to wit:

Omaha, Douglas Co., Nebraska:

"Lot 3, in block 52	$50 00
"Lot 4, in block 52	450 00
"Total	$500 00

"(The said defendant's only interest in said property, as appears by the records of Douglas Co., Neb., being that of occupancy and possession, we appraise the said interest as above.)

"Given under our hands this 20th day of July, 1878.

"WILLIAM DAILY,
"*Marshal of the United States for the District of Nebraska,*
"By ELLIS L. BIERBOWER, *Deputy.*
"JOHN CAMPBELL.
"JOHN B. FURAY.

"50 cents paid appraisers, each."

Third exception. That the master failed to find what liens or incumbrances were deducted by the appraisers in ascertaining the interest of George W. Frost in said lots, whereas he should have found as a fact that said appraisers deducted outstanding tax titles on said lots in ascertaining the interest of George W. Frost therein.

Fourth exception. That said master should have found the additional facts on the question of homestead, that said lots 3 and 4, in block 52, are contiguous and are within the corporate limits
312 of the city of Omaha, in the State of Nebraska, and are less than one-half acre in extent, and have a dwelling-house and outbuildings thereon, and were occupied and used in good faith by George W. Frost and Abby B. Frost, husband and wife, as a homestead for more than ten years last past and are still occupied and used.

Fifth exception. That the master found "that as to George W. Frost his claim of homestead in said premises was fully adjudicated in the case of Redick *vs.* Frost in this court"—

Whereas the master should have found that the homestead rights of George W. Frost and Abby B. Frost were not adjudicated in the case of Redick *vs.* Frost.

Sixth exception. That the master should have further found that the fact that George W. Frost claimed said lots as a homestead, and

that they were not subject to sale appears of record in the case of Redick *vs.* Frost.

Seventh exception. That the master found "that the payment of the amount found due by the district court of Douglas county from Frost to the Credit Mobilier was made by Redick, he having by reason of his purchase at marshal's sale succeeded to the rights of the said George W. Frost in said lots"—

Whereas he should have found that John I. Redick did not acquire the interest of George W. Frost in said lots by reason of his purchase at said pretended marshal's sale thereof, and that the payment by him to the clerk of the State court of the amount found due to the Credit Mobilier by said State court was a voluntary payment, and did not vest in him, said Redick, any title to said lots.

Eighth exception. That the master finds as a conclusion of law that the sale of said lots and confirmation thereof in the case of Redick *vs.* Frost, being prior to June the 1st, 1879, when the
313 new homestead law took effect, the said Abby B. Frost did not acquire any interest or estate in said lots, of homestead or otherwise—

Whereas he should have found that at the time of said sale of said lots George W. Frost and Abby B. Frost did have a homestead right in said lots which was not destroyed or affected by said sale of said lots on the judgment in the case of Redick *vs.* Frost.

Ninth exception. That the said master found that the cross-bill of George W. Frost and Abby B. Frost against Martin Spitley, should be dismissed at the cost of said Frost—

Whereas he should have found that no title passed to John I. Redick, the grantor of Martin Spitley, to the lots in controversy by reason of the pretended sale thereof in the case of Redick *vs.* Frost, and that said George W. Frost and Abby B. Frost are entitled to a decree as prayed in their said cross-bill.

GEORGE W. FROST AND
ABBY B. FROST,
By WEBSTER & GAYLORD,
Their Solicitors.

Upon the back of said exceptions of George W. Frost appear endorsements in words and figures following, to wit: No. 8, U. S. circuit court, district of Nebraska. Martin Spitley *vs.* Thomas C. Durant *et al.* Exceptions of George W. Frost and Abby B. Frost, complainants in cross-bill, to master's report. Filed Nov. 4, 1881. Watson B. Smith, clerk. Webster & Gaylord, sol's for Frost.

314 Thereupon, afterwards, to wit, on the 18th day of November, 1881, Bryant's exceptions to master's report was filed in said case, which said exceptions are in words and figures following, to wit:

Exceptions to Master's Report.

In the Circuit Court of the United States, District of Nebraska. In Equity.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLY *et al.*, Defendants. } No. 8, G.

Exceptions taken by the said complainant to the report of Dwight G. Hull, Esq., the master of said court, to whom was referred said cause to report upon the law and the facts.

First. The complainant excepts to the 4th finding in that part of the master's report which relates to the cross-bill of the complainant because he therein finds that the tax deeds of Thomas Bryant are void and convey no title, when he should have found that the deed issued to Bryant in 1880 for the taxes of 1877 was valid and conveyed the title.

Second. The complainant excepts to all that portion of the said report devoted to the cross-bill of said Bryant because it is based upon the conclusion that the tax deeds were all void and conveyed no title to Bryant, when the report should have been in favor of the validity of the tax deed issued in 1880 to Bryant on the sale of the lots for the taxes of 1877, the exception being only made on said ground, and for no other reason.

Wherefore the said Thomas Bryant humbly appeals from said report to the judgment of this honorable court.

GROFF & MONTGOMERY,
Solicitors for Complainant.

315 Upon the back of said exceptions appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Thomas Bryant *vs.* Martin Spitly *et al.* Bryant's exceptions to master's report. Filed Nov. 18th, 1881. Watson B. Smith, clerk, by Elmer D. Frank, dep. Groff & Montgomery, sol's for Bryant.

Thereupon, afterwards, to wit, on the 21st day of November, 1881, exceptions of complainant Spitly to master's report was filed in said case, which said exceptions are in the words and figures following, to wit:

Exceptions to Master's Report.

In the Circuit Court of [the] United States for the District of Nebraska.
In Chancery.

MARTIN SPITLY, Complainant,
vs.
GEORGE W. FROST *et al.*, Respondents.

The complainant Spitly excepts to that portion of said master's report found in that part thereof referring to the cross-bill of George W. Frost and Abby B. Frost. Complainant excepts to the second

finding therein and to that part which uses this language: "That for about eighteen months, commencing in July or August, 1877, they temporarily resided in Crow agency, Montana," when the master should have found, in fact, that they were residents of Montana.

Complainant further excepts to said master's report and to that part referring to the cross-bill of Thomas Bryant, and to the 5th finding therein, in these words: "I am unable from the proofs to determine what legal taxes were included in the several amounts paid by Bryant on such certificate," but the said master should have found from the proofs before him that the claim of a tax lien by Bryant upon said property was not sustained, and that the cross-bill of Bryant should be dismissed.

316 And complainant excepts to the sixth finding therein: "That an account should be taken of all sums of money paid by said Bryant on lots three and four, block 52, for taxes, and that said Bryant should be subrogated to the rights of the county of Douglas and city of Omaha, and all sums legally paid, with interest from the time of payment, be adjudged and decreed to be liens upon said lots, and to be paid within a time fixed by the court, and if not," etc., but the master should have found, under the proof, that there was no evidence sustaining said cross-bill, and that the same should be dismissed.

And excepts to the last finding in said report: "That it should be decreed that the amount found due on accounting for taxes paid by said Bryant and interest thereon should be a lien on said lots," but that said finding should have been that said bill be dismissed.

All of which is respectfully submitted.

REDICK & REDICK,
Sol's for Compl't.

Upon the back of said exceptions appear endorsements in words and figures following, to wit: No. 8, G. Circuit court of U. S., district of Nebraska. Martin Spitley, compl't, *vs.* George W. Frost *et al*, resp'd'ts. Exceptions of complainant Spitley to master's report. Filed Nov. 21, 1881. Elmer D. Frank, clerk. Redick & Redick, sol's for compl't.

Thereupon, afterwards, at the January term of court, on the 6th day of February, 1882, the following proceedings were had in said case, as appears of record on folio 583, Journal G of said court, to wit:

MARTIN SPITLEY
against
GEORGE W. FROST. } Original Bill.

317 GEO. W. FROST and ABBY B. FROST
vs.
MARTIN SPITLY. } Cross-Bill.

THOMAS BRYANT.
vs.
MARTIN SPITLEY *et al.* } Cross-Bill.

It is ordered that this cause be referred to Dwight G. Hull, master, with instructions to find and report all the facts relative to the purchase of the property in controversy at tax sales by said cross-complainant, Thomas Bryant, and the execution of deeds to him therefor. If necessary the master may take further proof upon this subject, and he will report as soon as practicable, and at least before thirty days before the next May term of this court, at which term the question of the validity of the title of said Bryant may be further argued by counsel.

(Signed) GEO. W. McCRARY,
Circuit Judge.

Thereupon, afterwards, to wit, on the 20th day of April, 1882, a master's report was filed in said case, which said master's report is in words and figures following, to wit:

Master's Report.

United States Circuit Court, District of Nebraska. In Equity.

THOMAS BRYANT, Complainant,
vs.
MARTIN SPITLEY *et al.*, Defendants. } No. 8, Docket G.

Cross-bill.

To the Honorable George W. McCrary and Elmer S. Dundy, judges of the said court:

In pursuance of a decretal order made and entered in the above-entitled cause and bearing date on the sixth day of February, A. D. 1882, at chambers of this court, said district, by which said cause was referred to Dwight G. Hull, one of the masters in chancery of this court, to find all the facts relative to the purchase of the property in controversy at tax sales by said cross-complainant,
318 and report to this court the facts, as shown by the pleadings and proofs—

I, Dwight G. Hull, a master in said court, do respectfully report that I have proceeded to investigate the matters so referred to me, and that, pursuant to a notice duly issued, I have been attended by the solicitors for complainants and defendants, and, after careful examination and consideration, I do find and report—

First. That lots 3 and 4, block 52, Omaha, were duly assessed and returned for taxation for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, & 1878, for State and county taxes, and were listed and returned for city taxes for the years 1872, 1873, 1874, 1875, 1876, 1877, & 1878.

Second. There was levied upon said lots taxes as follows, State and county:

1867.	Lots 3 and 4, block 52	$90 00
1868.	" " "	54 00
1869.	Lot 4 "	141 75
"	" 3 "	24 30
1870.	" 4 "	126 50
"	" 3 "	41 40
1871.	" 4 "	103 50
"	" 3 "	36 80
1872.	" 4 "	73 80
"	" 3 "	26 24
1873.	" 3 "	31 49
"	" 4 "	73 49
1874.	" 3 "	30 19
"	" 4 "	66 41
1875.	" 3 "	30 77
"	" 4 "	72 52
1876.	" 3 "	24 00
"	" 4 "	56 00
	1877. Lot 3 "	19 00
319	1877. " 4 "	44 00
	1878. " 3 "	20 42
1878.	Lot 4 "	47 30

And for city taxes there was levied—

1872.	Lot 3	28 75
"	" 4	82 80
1873.	" 3	37 50
"	" 4	87 50
1874.	No lot or block given	30 00
"		66 00
1875.	Lot 3, block 52	33 60
"	" 4, "	79 20
1876.	" 3, "	21 60
"	" 4, "	50 40
1877.	" 3, "	21 14
"	" 4, "	48 95
1878.	" 3, "	25 18
"	" 4, "	58 30

Third. On September 3rd, 1873, Thomas Bryant purchased at public sale lot 4, block 52, for the taxes, costs, and charges of 1872, and on Sept. 13th, 1875, received from the county treasurer a tax deed which I find is void upon its face for the following reasons:

(*a.*) Said deed does not show the place of sale. (*b.*) It includes four tracts or pieces of land for a gross consideration and does not show the amount for which each tract was sold. (*c.*) The sale upon which it is based was void, as said lot was not sold for all taxes due thereon, nor did the purchaser pay or offer to pay all taxes due thereon.

Fourth. On Dec. 15th, 1873, Thomas Bryant purchased
320 at private sale lot 3, block 52, Omaha, for the taxes, costs, and charges for the year 1872, and on Dec. 20th, 1875, received a tax deed therefor from the county treasurer, which deed and sale I find to be void for the reasons last above mentioned.

Fifth. On December 23d, 1875, one Emily Satterthwait purchased at private tax sale lot 4, block 52, Omaha, for the taxes, costs, and charges for the year 1871, the certificate of which sale she afterwards assigned to Thomas Bryant, and on Jan. 22nd, 1878, a tax deed was issued to him thereon, and I find that said deed is not in conformity with law, and the sale upon which it was founded was void, for that the purchaser did not pay or offer to pay all the taxes due on said lot.

Sixth. That on Nov. 15th, 1876, Thomas Bryant paid to the treasurer the taxes on said lots 3 and 4, block 52, Omaha (with interest), for the years 1867, 1868, 1869, 1870, and 1871, amounting in the aggregate to the sum of $916.04.

Seventh. That on Nov. 6th, 1878, one J. C. Noyes bought of treasurer, at public tax sale, for the taxes, costs, and charges for the year 1877, State, county, and city taxes, lot 3, block 52, for the sum of $45.60, and lot 4, block 52, for the sum of $104.67, which certificates he assigned to complainant Bryant.

Eighth. Both of said lots having been sold to one J. W. Gannett for the tax of 1878, Thomas Bryant, on the 3rd day of May, 1880, redeemed the same from said sale, paying to the treasurer therefor the sum of $184,75.

Ninth. On the 29th day of July, 1880, an agent of Thomas Bryant served a notice upon Geo. W. Frost, as occupant or owner, that said lots were sold Nov. 6th, 1878, at public sale to J. C. Noyes for the delinquent taxes of 1877 thereon, for which taxes said real estate was taxed in the name of T. C. Durant, and that the time of redemption from sale would expire Nov. 7th, 1880, and that unless said real estate was redeemed from said sale on or before said time a deed would be issued to Thomas Bryant or his assignee.

321 Tenth. But one notice was served, and both lots 3 and 4, block 52, included therein, and said notice did not show that the certificates of sale had been assigned by Noyes to Bryant.

Eleventh. Said notice was not served upon Mrs. Frost, who was then an occupant of said lots, claiming a homestead title therein.

Twelfth. The notice, affidavit, and certificates were duly filed and recorded, as required by law, that being the evidence upon which the deed was issued.

Thirteenth. On December 1st, 1880, a deed was issued by the then treasurer to Thomas Bryant upon said last-named sale, which deed

is in form prescribed by statute, except that it is not made under the official seal of his office, and does not bear the official seal of treasurer.

I herewith return this evidence taken by me under the order, marked Exhibits "A" & "B," D. G. H.

All of which is respectfully submitted.

DWIGHT G. HULL, *Master.*

Upon the back of said master's report appear endorsements in words and figures following, to wit: No. 8, G. Bryant, cross-complainant, *vs.* Martin Spitly *et al.* Master's report. Filed Apr. 20th, 1882. Elmer D. Frank, clerk.

322 And also on said 20th day of April, 1882, there was filed in said case the following paper, marked Exhibit "A," and referred to by the master in his report; which exhibit is in words and figures following, to wit:

Taxes for the Year 1867 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	By warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	15 00			
	4	"			State sink'g fund	9 00			
					State school	12 00			
					Co. sinking fund	12 00			
					Co. general fund	18 00			
					Co. sinking fund	9 00			
					Land, road				
					Poll tax				
					Poor fund	12 00			
					Dist. school				
					Court-house	3 00			
					Advertising				
					Total	90 00			

323 *Taxes for the Year* 1868 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town, or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	9 00			
	4	"			State sink'g fund	4 50			
					State school	6 00			
					Co. road and bridge	6 00			
					Co. general fund	19 50			
					Co. sinking fund	75			
					Land, road tax				
					Poll				
					Poor fund	7 50			
					Dist. school				
					Court-house	75			
					Advertising				
					Total	54 00			

Taxes for the Year 1869 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town, or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	12 30			$24 30
	4	"			State sink'g fund	6 15			141 75
					State school	8 20			
					Road and bridge	8 20			
					Co. sinking fund bond	16 40			
					Co. general fund	32 80			
					Land, road				
					Poor fund	8 20			
					Dist. school	65 60			
					State university	8 20			
					Poll				
					Dog				
					Advertising				
					Total	166 05			

324 *Taxes for the Year* 1870 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town, or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	14 60			41 40
	4	"			State sink'g fund	3 65			126 50
					State school	14 60			
					State university	7 30			
					Co. general fund	21 90			
					Co. special sink'g fund	7 30			
					Co. sink. R. R. bond fund	7 30			
					Co. sin. R. R. bond fund	29 20			
					Road fund				
					Road & bridge	7 30			
					Poor fund	7 30			
					Dist. school	47 45			
					Poll				
					Dog				
					Advertising				
					Total	167 90			

Taxes for the Year 1871 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town, or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	4 00			
					State sink'g fund	1 60			
					State school	3 20			
					State norm-l school	80			
					Co. general fund	4 80			
					Co. special sink'g fund	80			
					Co. sinking bond fund	80			
					Co. sin. R. R. bond fund	9 60			
					Co. sin. R. R. b'dge bond	4 80			
					Road fund				
					Road and bridge	1 60			
					Poor fund	1 60			
					Dist. school	3 20			
					Poll				
					Dog				
					Advertising				
					Total	36 80			

325 *Taxes for the Year* 1871 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	4	52			State gen'l fund	11 25			$103 50
					State sink'g fund	4 50			
					State school	9 00			
					State n-rm-l school	2 25			
					Co. general fund	13 50			
					Co. special sin. fund	2 25			
					Co. sinking bond fund	2 25			
					Co. sin. R. R. bond fund	27 00			
					Co. sin. R. R. b'dge bond	13 50			
					Road fund				
					Road & bridge	4 50			
					Poor fund	4 50			
					Dist. school	9 00			
					Poll				
					Dog				
					Advertising				
					Total	103 50			

Taxes for the Year 1872 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants	Interest.	Total.
Omaha	3	52			State gen'l fund	12 20			26 24
	4	"			State sink'g fund	4 88			73 80
					State school	9 76			
					State university	1 22			
					Co. general fund	19 52			
					Co. special sin. fund	2 44			
					Co. sin. R. R. bond fund	29 28			
					Co. sin. R. R. b'dge bond	14 64			
					Road fund				
					Road & bridge	4 88			
					Poor fund	1 22			
					Dist. school				
					Poll				
					Dog				
					Advertising				
					Total	100 04			

326 *Taxes for the Year* 1873 *on the Annexed Property or Real Estate.*

Part of section or name of town	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	12 50			31 49
	4				State sink'g fund	5 00			73 49
					State school fund	10 00			
					State university fund	1 24			
					State penitentiary	2 50			
					County gen'l fund	20 00			
					County spec'l sinking fund	2 50			
					Co. s'k'g R. R. bond fund	30 00			
					Co. s'k'g R. R. bridge bond	15 00			
					Road fund				
					Road & bridge	2 50			
					Poor fund	3 74			
					Dist. school				
					Poll				
					Dog				
					Advertising				
					Total	104 98			

Taxes for the Year 1874 *on the Annexed Property or Real Estate.*

Part of section or name of town	Section or lot.	Town, or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State general fund	12 00			30 19
	4	52			State sinking fund	4 80			66 41
					State school fund	9 60			
					State university fund	1 20			
					State penitentiary	2 40			
					County gen'l fund	24 00			
					County spec'l sink'g fund	2 40			
					R. R. bond sinking fund	21 60			
					R. R. bridge b'd s'k'g fund	12 00			
					Road & bridge fund	4 80			
					Poor fund	1 20			
					Asylum	60			
					Road				
					Dist. school				
					Poll				
					Dog				
					Advertising				
					Total	96 60			

327 [*Taxes*] *for the Year* 1875 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town, or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	18 80			30 77
	4				State sink'g fund	4 70			72 52
					State school fund	4 70			
					State university fund	1 18			
					State penitentiary	4 70			
					Bond fund	47			
					Co. general fund	25 85			
					Co. sinking fund	2 35			
					R. R. bond sink'g fund	18 80			
					R. R. bridge b'd s'k'g fund	9 40			
					Road and bridge	9 40			
					Poor fund	2 35			
					Asylum fund	59			
					Road fund				
					Dist. school				
					Poll				
					Dog				
					Advertising				
					Total	103 29			

Taxes for the Year 1876 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	16 00			24 00
	4	"			State sink'g fund	3 00			56 00
					State school fund	4 00			
					State university fund	1 00			
					State penitentiary	4 00			
					Bond fund	40			
					Co. general fund	20 00			
					Co. sinking fund				
					R. R. bond s'k'g fund	16 00			
					R. R. bridge b'd s'k'g f'd	8 00			
					Road & bridge	6 60			
					Poor fund				
					Asylum fund	1 00			
					Road fund				
					Dist. school				
					Poll				
					Dog fund				
					Advertising				
					Total	80 00			

328 *Taxes for the Year* 1877 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State general fund, 4	12 60			19 00
	4	"			State sink'g fund, $\frac{7}{10}$	2 76			44 00
					State school fund, 1	3 15			
					State university fund, $\frac{3}{8}$	1 18			
					Co. general fund, 6	18 90			
					R. R. bond sink'g fund, $3\frac{1}{2}$	11 02			
					R. R. bridge b'd sin. f'd, $2\frac{1}{4}$	7 09			
					Bridge fund, 2	6 30			
					Dist. school				
					Dog				
					Advertising				
					Total	63 00			

Taxes for the Year 1878 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State general fund, 4	12 60			20 42
	4	"			State sink'g fund, ⅜	2 75			47 30
					State school fund, 1	3 15			
					State university fund, ⅜	1 18			
					Co. general fund, 10	31 50			
					Bond sink'g f'd, 5¼	16 54			
					Dist. school				
					Dog				
					Advertising				
					Total	67 72			

329 STATE OF NEBRASKA, }
County of Douglas, } *ss:*

I, John Rush, treasurer of said county, do hereby certify that the hereto attached exhibits are true and correct transcripts and copies of the tax-lists and duplicates of said county for the years therein named, showing the amounts of taxes for the State and county assessed on lots 3 and 4, in block 52, in Omaha city, for each year, without interest.

Omaha, Neb., Feb'y 13th, 1882.

JOHN RUSH,
Co. Treasurer.

The complainant Spitly objects to the introduction of each and all of the copies of the record hereby offered on the grounds—1, they are immaterial and incompetent; 2, not the best evidence of the payment of the tax by Bryant; 3, they show upon their face that the statute of limitations has run against their collection and that respondent, by taking deeds, has waived his tax lien.

REDICK & REDICK,
Sol's for Compl't.

Defendant Frost and complainants by cross-bill, Frost and wife make same objections as complainant Spitly, and the further objection that under the issues as joined Bryant is not entitled to any relief as against them.

WEBSTER & GAYLORD,
Att'ys for Frost & Wife.

Upon the back of said exhibit appear endorsements in words and figures following, to wit: Exhibit "A," D. G. H. No. 8, G. Filed April 20, 1882. Elmer D. Frank, clerk.

330 And also on said 20th day of April, A. D. 1882, there was filed in said cause the following paper, marked Exhibit "B," and referred to by the master in his report; which said exhibit is in words and figures following, to wit:

City Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1874.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
$1,500	3	52	$15	7 50	7 50	----------	30 00
3,300	4	52	33	16 50	16 50	----------	66 00

CITY OF OMAHA, }
Douglas County, Nebraska, } *ss:*

I hereby certify that the above is a true and correct transcript from the copy of the tax-list for the year 1874 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

May 1st, 1882.

TRUEMAN BUCK,
City Treasurer.

City Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1872.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
1,437	3	52	14 38	10 06	4 31	----------	28 75
4,140	4	-------	41 40	28 98	12 42	----------	82 80

CITY OF OMAHA, }
Douglas County, Nebraska, } *ss:*

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for the year 1872 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, 1882.

TRUEMAN BUCK,
County Treasurer.

331 *City Taxes Assessed on the Following Described Property in the City of Omaha for the Year* 1873.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
			$ Cts.	$ Cts.	$ Cts.		$ Cts.
1,500	3	52	15	11 25	11 25	----------	37 50
3,500	4	----------	35	26 25	26 25	----------	87 50

CITY OF OMAHA, } ss:
Douglas County, Nebraska, }

I hereby certify that the above is a true and correct transcript from and copy of tax-list for the year 1873 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, '82.

TRUEMAN BUCK,
City Treasurer.

City Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1874.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
1,500	----------	----------	15	7 50	7 50	----------	30
3,300	----------	----------	33	16 50	16 50	----------	66

CITY OF OMAHA, } ss:
Douglas County, Nebraska, }

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for the year 1874 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, '82.

TRUEMAN BUCK,
City Treasurer.

City Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1875.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
1,400	3	52	14	9 80	9 80	----------	33 60
3,300	4	----------	33	23 10	23 10	----------	79 20

332 CITY OF OMAHA, } ss:
Douglas County, Nebraska, }

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for the year 1875 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, '82.

TRUMAN BUCK,
City Treasurer.

City Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1876.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
1,200	3	52	12 00	4 80	4 80	.....	21 60
2,800	4	.....	28 00	11 20	11 20	.....	50 40

CITY OF OMAHA, } ss:
Douglas County, Nebraska, }

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for the year 1876 of the city of Omaha relating to the above-described lots, as to matters above stated and given.

Feb. 15, '82.

TRUMAN BUCK,
City Treasurer.

City Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1877.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
950	3	52	9 50	6 65	4 75	.24	21 14
2,200	4	.....	22 00	15 40	11 00	.55	48 95

CITY OF OMAHA, } ss:
Douglas County, Nebraska, }

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for the year 1877 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, '82.

TRUMAN BUCK,
City Treasurer.

333 *Taxes Assessed on the Following Described Property in the City of Omaha for the Year* 1878.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
950	3	52	9 50	6 65	8 55	48	25 18
2,200	4	------	22 00	15 40	19 80	1 10	58 30

CITY OF OMAHA, }
Douglas County, Nebraska, } *ss:*

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for the year 1878 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, '82.

TRUMAN BUCK,
City Treasurer.

The complainant Spitly objects to the introduction of each and all of the copies of the record hereby offered on the grounds—1, they are immaterial and incompetent; 2, not the best evidence of the payment of the tax by Bryant; 3, they show on their face that the statute of limitations has run against their collection, and that the respondent by taking deeds has waived his tax lien.

REDICK & REDICK,
Sol. for Compl't.

Defendant Frost and complainant by cross-bill, Frost & wife, make same objections as complainant Spitly, and further objection that Bryant under the issues joined is not entitled to any relief as against them.

WEBSTER & GAYLORD,
Atty's for Frost & Wife.

Upon the back of said Exhibit "B" appear endorsements in words and figures following, to wit: No. 8, G. Filed April 20, 1882. Elmer D. Frank, clerk.

334 Thereupon, afterwards, to wit, on the 4th day of May, 1882, an opinion was filed in said case; which said opinion is in words and figures following, to wit:

On Exceptions to Master's Report.

Circuit Court United States, District of Nebraska. April, 1882.
In Equity.

SPITLY *vs.* FROST *et al.*

This is a bill brought to recover and compel the conveyance of the legal title to lots 3 and 4, block 52, in the city of Omaha. The complainant claims to own the equitable title to said premises under and by virtue of a judgment against respondent, Geo. W. Frost, and a sale of the premises thereon under execution to complainant's grantor, John I. Redick. The said Frost and his wife, Abby Frost, filed a cross-bill in which they aver that the sale by the marshal under which the complainant claims was void and conferred no title on the purchaser, because the premises were the homestead of said Frost and family, and, therefore, under the statute of Nebraska, exempt from sale upon execution. The facts upon which the claim of exemption is founded are as follows:

1st. Prior to the year 1866 the premises were purchased by the Credit Mobilier of America under a contract between that company and said Geo. W. Frost, and the title taken in the name of the president of the company as trustee, and upon one of the lots a dwelling was erected for the use of Frost and family. The agreement provided for a conveyance to Frost of the legal title upon his compliance with its terms.

Second. The contract between Frost and Redick upon which the latter brought suit by attachment and in which the judgment now rendered under which the sale of the premises to Redick was had was dated Nov. 11th, 1870, and it was signed by Frost alone, his wife not joining.

Third. The suit upon said contract was commenced by Redick July 26th, 1877, and Mr. Frost was not made a party. An attachment was issued, and on the 31st day of July, 1877, the same was levied upon the premises in question. There was a trial by jury and judgment for $2,388.85 was rendered against Geo. W. Frost, with an order for the sale of the attached property.

335 Fourth. A motion and petition for a new trial having been filed by Frost they were, upon the 22nd day of June, 1878, overruled; and on July 1st, 1878, an order of sale was issued and the attached property was, on Aug. 24th, 1878, duly sold by the marshal to the plaintiff in said action, John I. Redick.

Fifth. On the 7th of Jan., 1879, exceptions to said sale and a motion to set the same aside were filed by counsel for Geo. W. Frost, which were overruled, the sale confirmed, and the marshal ordered to execute a deed to the purchaser, which was afterwards done.

Sixth. The facts concerning the occupancy of said premises by Frost and wife as their homestead are thus specially found by the master:

"1st. That in 1866 defendant Frost went into possession of said lots 3 and 4, block 52, under an agreement with the Credit Mobilier

of America, whereby he was to reside thereon, and on final settlement with them said lots were to become the property of Frost.

"Second. I find as a matter of fact that in the final settlement made by the district court of Douglas Co., between said Frost and the Credit Mobilier, Frost was charged with the rent and use of said premises.

"Third. That both prior and subsequent to the decree of said district court Frost and his family occupied said premises and lived thereon until about July, 1877, when Frost with his wife and family went to Montana, he going as U. S. Indian agent to the Crow Indian agency.

"Fourth. That Frost and family were absent from Omaha about 18 months on such official service, but left the greater part of their household goods on said premises and returned there to live in January, 1879, and have so occupied said premises up to the bringing of this suit."

And upon the same subject the master further found as follows:

"First. That Geo. W. Frost and Abby B. Frost are husband and wife and have resided in Omaha for the past 15 years, and at
336 no time have lost their residence in Omaha by reason of absence therefrom.

"Second. That for about 18 months, commencing in July or August, 1877, they temporarily resided at Crow agency, Montana, where Frost was acting officially as Indian agent.

"Third. That during their absence the house on lots 3 and 4, in block 52, was occupied by a friend without rent, the household goods of Frost remaining therein.

"Fourth. That said Frosts then claimed said premises as their homestead.

"Fifth. That the judgment of Redick against Geo. W. Frost was based upon a written contract signed by Frost alone, and was not signed nor executed by Abby B. Frost, his wife.

"Sixth. There was no stipulation that said contract should bind the homestead of Frost.

"Seventh. That, as to Geo. W. Frost, his claim of homestead in said premises was fully adjudicated in the said case of Redick *vs.* Frost, in this court.

"Eighth. I find that at the time of the sale of said premises on Redick's said judgment notice was given by Hon. J. L. Webster, solicitor for Frost, to the marshal that Frost claimed said property as his homestead.

* * * * * * *

"Twelfth. I find as a conclusion of law that the sale of said lots and confirmation thereof in the case of Redick *vs.* Frost being prior to June 1st, 1879, when the new homestead law took effect, the said Abby B. Frost did not acquire any interest or estate in said lots, of homestead or otherwise. I do, therefore, find and report that the said cross-bill of Geo. W. Frost and Abby B. Frost against Martin Spitley should be dismissed at the cost of Frost."

To this conclusion of law the cross-complainants, Frost and wife,

file exceptions, and thus raise [the] question whether, under the facts found and the statutes of Nebraska, the premises were
337 exempt as a homestead.

The statute applicable to the question is "An act to exempt homesteads from judicial sale," approved Feb. 19th, 1877, and it provides as follows:

SEC. 1st. That where there is no special declaration of the statute to the contrary the homestead of every family, whether owned by the husband or wife, is exempt from judicial sale.

"SEC. 3rd. The homestead may be sold for debts created by written contract executed by the person having the power to convey, and expressly stipulating that the homestead is liable therefor, but it shall not in such case be sold except to supply the deficiency remaining after exhausting the other property pledged for the payment of the debt in the same written contract.

"SEC. 10th. Upon the death of either the husband or wife the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law.

"SEC. 20. The setting off of the distribution share of the husband or wife in the real estate of the deceased should be such a disposal of the homestead as is contemplated by the preceding section, but the survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased; but if there is no such survivor the homestead descends to the issue of either husband or wife, according to the rules of the descent, unless otherwise directed by will, and it is to be held by such issue exempt from any antecedent debts of their parents or their own."

McCRARY,
Circuit Judge.

Redick & Redick, for complainant.
Webster & Gaylord, for Frost and wife.
Groff and Montgomery, for other defendants.

Counsel for complainant insist that the property in contro-
338 versy is not exempt as a homestead—1st, because it was abandoned by Frost and wife in 1877 when they went to Montana, and while so abandoned was levied upon and sold under execution upon the Redick judgment; and, 2nd, because the homestead question was adjudicated by this court in its determination of the motion to confirm the homestead sale, and of the exceptions to said sale, and the motion to set the same aside, all appearing of record in the case of Redick *vs.* Frost; and, 3d, that Mr. Frost's homestead rights were waived by a failure to plat and record it or to claim it at the time of the sale. A temporary removal from the premises occupied as a homestead, with the intention of returning, is not an abandonment thereof, and does not render the premises liable to sale upon execution. It is well settled that a person employed in the public service of the United States does not lose his residence by leaving his place of abode and residing temporarily at the place where his official duties require him to be. It is true that if such a person determines to change his place of abode, and to fix

his domicile permanently at the place where he is to discharge such official duties, he may lose his residence and rights of homestead at his former abode, but such a purpose is not to be inferred from the fact that he goes to the place where his official duties are to be discharged; it must otherwise appear. In the present case there is abundant evidence that Frost and wife had no intention to abandon their home in Omaha; they left their house there in charge of a friend, from whom they collected no rent; the most of their furniture they left in it, and they expressed their purpose to return to it. It is, therefore, entirely clear that there was no abandonment of the homestead. Thompson on Homestead, sec. 287, 266; Potts *vs.* Davenport, 79 Ill., 16; Huges *vs.* Huges, 74 Ill., 312; McMullen *vs.* Warner, 38 Tex., 410.

339 Is the order of the court, in the case of Redick *vs.* Frost, confirming the sale and overruling the motion to set the same aside an adjudication of the homestead question by which Frost and wife are estopped? It is true that one of the grounds upon which the motion to set aside the sale was based was that the lots sold constituted the homestead of the defendant Frost, and were not liable to sale. It may be questioned whether the court could, upon a motion to set aside the sale, inquire into and finally determine the question of homestead, even in a case where husband and wife are parties, but, without deciding that question, let us consider whether such an order, made in a case to which the husband alone is a party, can be held to determine the question finally. The homestead laws are for the protection of the family. Their purpose is to exempt the home for the benefit of the family. They are enacted in pursuance of a beneficent public policy, and should *be* be liberally construed. The husband alone has no power to convey or encumber the homestead. In this respect, at least, the wife is wholly independent of the husband, and it seems clear that a judgment against the husband alone can have no greater effect upon the homestead than would a contract purporting to bind the homestead and signed by him alone. If the husband, by appearing in court without the wife's consent, confer upon the court jurisdiction to oust the wife and children from the home, it is easy *to* submit — the most important provision of the homestead laws could thus be nullified; and it is equally clear that a judgment declaring the homestead of a debtor and family liable to judicial sale must be valid as against both husband and wife or not valid at all. It is apparent, upon the mere statement of the proposition, that a proceeding to subject the property to sale as against one and not as against the other must be a nullity. To execute such a judgment — would be necessary to separate husband and wife, and to give a portion of the family a right to occupy the home while another

340 portion would be excluded. Within the purview of the homestead laws, the family is a unit, and whatever is sufficient to oust one member of it must be held sufficient to oust all. This view is well supported by authority. In Revalk *vs.* Kraemer, 8 Cal., 73, it is held that "when the husband appears alone and defends the suit his right to the homestead is no more concluded by the decision than by his separate execution of the deed or mortgage. Legal pro-

ceedings to be conclusive against either must embrace both." And this ruling was reaffirmed in the subsequent case of Kraemer *vs.* Revalk *et al.*, same vol., p. 75, the court saying "unless both husband and wife were before the court no notice should have been taken as to the question of homestead." The same rule was again laid down in Marsh and wife *vs.* Mart'r, 9 Cal., 96; and see Larson *vs.* Reynolds, 13 Iowa, 579.

The remaining question is whether Frost and wife waived their homestead right by a failure to plat and record it. In the support of the affirmation of this proposition counsel rely upon the case of Rector *vs.* Rattan, 3 Neb., 171. That case was prior to 1874, and was decided under the homestead law then in force, which was very different from the act of 1857. The old act provided for the exemption of a certain quantity of land, together with the dwelling-house and appurtenances, to be selected by the owner thereof and not included in any incorporated city or village, or instead thereof, at the option of the owner, a quantity of contiguous land not exceeding two lots, being within an incorporated town, city, or village, &c. The requirement that the homestead should be selected by the owner seems to apply only to a homestead upon land outside of an incorporated town, city, or village; but even if we assume this conclusion, and also that the act in this respect applies to the present case (as perhaps it may, since the act of 1877 does not define the extent of the homestead), it does not in the least impair the
341 rights of Frost and wife to assert their homestead rights. This will be seen by reference to a subsequent provision of the older act, which is as follows:

"Whenever a levy should be made upon the lands and tenements of a householder, being the head of a family, whose homestead has not been selected by metes and bounds, such householder may notify the officer at the time of making the levy of what he regards as his homestead, with a description thereof within limits above prescribed, and the remainder alone shall be subject to sale under such levy."

The master finds, and the court holds, that notice was given at the time of the marshal's sale that Frost claimed the two lots which were to be sold as his homestead. If any notice was necessary this was sufficient.

These considerations lead to the conclusion that the property in controversy was and is exempt from sale under the judgment in the case of Redick *vs.* Frost, and that complainant is therefore not entitled to a decree quieting title in him, and that respondent Frost and wife are entitled to decree on their cross-bill setting aside said sale.

It appears from the report of the master that Redick, in order to protect the title to said premises and defend the action of ejectment brought by Bryant, trustee, paid to said Durant the sum of $636.58, which should have been paid by Frost on the original decree (see 10th finding of master). For this sum the homestead of Frost and wife was probably liable, but as Redick is not a party to this suit, and there is no prayer for the relief on account of the payment of

question; that the sale of said premises to him by the marshal was void, and that this complainant receive no better title than
345 said Redick had to the same.

But your orator further shows unto your honors that before said Redick conveyed said premises to your orator by deed he, said Redick, had, on the 8th of June, 1880, advanced to said Frosts the sum of six hundred and thirty-six dollars and fifty-eight cents to perfect the title to said property in said Frost under the decree rendered by the district court of Douglas Co., Nebraska, being a condition precedent upon his obtaining title to said premises, which the said Frost neglected and refused to do.

And your orator further showeth unto your honors that suit in said district court had been commenced to oust said Frosts from the premises, and default was taken or about to be taken against them when said Redick advanced said money and saved the title to said property to them.

And your orator further showeth that by the purchase from said Redick of said premises he succeeded to all the rights and equities of said Redick [in] and to the same, including the said money so advanced by him, which was a part of the purchase-money of said premises, which your orator charges is an equitable lien against said premises, together with interest from the date of said payment, and charges the fact to be that said Redick has no interest in said money advanced and claims no interest therein, but desires and requests the court to decree said money and interest to your orator.

And your orator prays that it may be ordered, adjudged, and decreed by this court—

1st. That the said Redick paid said sum of money to perfect the title of said premises in said Frosts and to prevent them from being ejected.

2nd. That the amount of said payment, with interest, became and is an equitable charge or lien upon said premises; and—

3d. That your orator, by the purchase of said premises from said Redick, became entitled to said equity and is now the holder thereof.

346 4th. That unless said sum and interest is paid to complainant by a time to be fixed by the court, that the premises, or so much thereof as shall be necessary to make said amount, shall be sold by and under the order of this court, and for such other and further relief as to the court shall seem proper and the case demands.

And your orator will ever pray.

MARTIN SPITLEY,
By REDICK & REDICK,
Sol's & Counsel for Compl't.

Upon the back of said supplemental bill appear endorsements in words and figures following, to wit: No. 8, G. Circuit court of U. S., district of Nebraska. In chancery. The supplemental bill of complaint of Martin Spitley, exhibited in said court by leave thereof.

Filed May 5th, 1882. Elmer D. Frank, clerk. Redick & Redick, sol's & of counsel.

Thereupon, afterwards, to wit, on the 29th day of May, 1882, petition for rehearing was filed in said case; which said petition for rehearing is in words and figures following, to wit:

Petition for Rehearing.

In the Circuit Court of the United States for the District of Nebraska.
In Chancery.

MARTIN SPITLEY, Compl't,
vs.
GEORGE W. FROST *et als.*, Respondents.

Comes now said complainant, Martin Spitley, and represents unto the court—

First. That among other things decided by the decree herein the court thereby found that the property in question was the homestead of said George W. Frost and Abby Frost at the time of the sale, which was the basis of the complainant's title, and as such was not subject to judicial sale.

Second. That as such Abby Frost was not a party to the attachment suit of Redick *vs.* Frost, she was not bound by the adju-
347 dications therein on the homestead rights, and that, in order for said adjudications to affect the homestead rights of either of said parties, they must have both been parties thereto.

Third. That the court should have found that, according to the homestead law applicable to the case, said Abby Frost had no interest or homestead interest whatever in said property at the time of said sale.

Fourth. That the court should have found that the homestead rights of said George W. Frost were finally determined and adjudicated by the court in the case of Redick *vs.* Frost.

Fifth. That the court should have found that said property was, at the time of said sale, subject thereto and said sale to have been valid and effectual in law.

Sixth. That the court should have granted the relief as in said complainant's bill is prayed.

All which matters and things appear of record herein.

Wherefore complainant prays a rehearing of said cause.

REDICK & REDICK,
Compl't's Sol's.

Upon the back of said petition for rehearing appear endorsements in words and figures following, to wit: No. 8, G. Circuit court U. S., district of Nebraska. In equity. Martin Spitley, compl't, *vs.* George W. Frost *et als.*, resp'd'ts. Petition for rehearing. Filed May 29th, 1882. Elmer D. Frank, clerk. Redick & Redick, att'ys for compl't.

Thereupon, afterwards, to wit, on the 2nd day of June, 1883, a supplemental cross-bill of Bryant was filed in said case; which said supplemental cross-bill is in words and figures following, to wit:

Supplemental Cross-Bill.

In the Circuit Court of the United States for the District of Nebraska.
In Equity.

348 THOMAS BRYANT, Complainant, *vs.* GEORGE W. FROST, ABBY FROST, and MARTIN SPITLEY, Defendants. } No. 8, G.

To the judges of the circuit court of the United States for the district of Nebraska:

Your orator, Thomas Bryant, for his supplemental cross-bill filed by leave of the court herein, respectfully showeth that on September 30th, 1880, an original bill was filed herein by said Martin Spitley against your orator and others, the object of which was to quiet his title to lots 3 and 4, in block 52, in Omaha city, Douglas county, Nebraska; that on January 11th, 1881, your orator filed his cross-bill herein against said Frost, Spitley, and others, wherein he sought to quiet his title to said real estate; that said Frosts also filed a cross-bill against said Spitley and others, whereby they asked to have certain clouds removed from their title to said real estate; that issues were joined on said bill and cross-bills by answers and replications duly filed, and such proceedings were had thereupon that, on May 4th, 1882, a decree of this court was rendered, wherein and whereby the bill of said Spitley was dismissed, and he and your orator, whose cross-bill was also dismissed, were adjudged to have no title to said real estate, and the title of said Frosts was quieted in them; that your orator's said cross-bill was based upon certain tax deeds which had been executed and delivered to him pursuant to certain tax sales of said lots, the said Bryant being the purchaser, or the assignee of the purchaser, and having paid a large amount of taxes upon said lots; that said tax deeds were by said decree held invalid and void; whereupon it was ordered that your orator have leave to file his supplemental cross-bill to show what taxes he had paid on said lots in order that the same might be recovered back from the owners of said lots.

Your orator therefore respectfully showeth to your honors
349 that at the dates following there was paid by him and by others who, prior to the commencement of the original action herein, had assigned their claims by reason of such payments, to your orator the following amounts:

On lot 3:

Taxes of	1867, on	Nov. 15th, 1876	$90 95
"	1868, "	"	51 35
"	1869, "	"	43 35
"	1870, "	"	68 82

Taxes of	1871, on Nov. 15th, 1876	56	75
"	1872, " Dec. 15th, 1873	59	21
"	1873, " September 9th, 1874	71	99
"	1874, " June 4th, 1875	61	09
"	1875, " July 14th, 1876	66	00
"	1876, " " 31st, 1877	47	73
"	1877, " Nov. 6th, 1878	42	62
"	1878, " May 3d, 1880	56	30

And on lot (4):

Taxes of	1867, on November 15th, 1876	$90	95
"	1868, " "	51	35
"	1869, " "	252	43
"	1870, " "	210	09
"	1871, " December 23d, 1875	149	04
"	1872, " September 3d, 1873	162	86
"	1873, " " 9th, 1874	167	96
"	1874, " June 4th, 1875	134	39
"	1875, " April 29th, 1876	151	72
"	1876, " July 31st, 1877	109	03
"	1877, " November 6th, 1878	98	71
"	1878, " May 3d, 1880	128	70

Said amounts, except in the case of the taxes of 1878, include only the taxes actually levied against said lots, with
350 lawful interest thereon from the time of delinquency to the time of payment, and do not include any of the costs of the above-mentioned tax sales. As to the said 1878 taxes, the amounts stated are the amounts paid by your orator to redeem the lots from a tax sale thereof legally made to one J. W. Gannett, which redemption prevented the acquirement by said Gannett of a tax deed on said lots, and protected the title thereof. Said payments were made under the provisions of the revenue acts of the State of Nebraska pursuant to the above-mentioned tax sales, which by the said decree were held invalid.

Your orator further showeth that on Dec. 24th, 1880, said lots were sold at tax sale to one J. E. Noyes for the delinquent taxes of 1879 thereon, and that said Noyes has assigned his certificates of such sale to your orator, who holds and owns them; that at said sale said Noyes paid as follows:

On lot three	$53 65
On lot four	118 56

That said amounts include all taxes, costs, and charges against said lots for the year 1879, the amount of the taxes levied, without interest, costs, or charges, being—on lot three, $47.25, and on lot four $105.00; that said lots have not been redeemed from said sale. Said defendant Spitley claims some lien upon or interest in said lots, which lien and interest, however, is subsequent and subject to the claim and lien of your orator thereon, which your orator has by reason of the facts hereinbefore alleged.

The other defendants, though they are owners of the fee-simple title to said lots, hold the same subject to the tax lien of your orator; and they refuse and neglect to discharge your orator's lien, though in equity your orator insists they are bound to pay to him the amount above set forth, with interest according to law.

Wherefore your orator submits that his lien should be de-
351 termined and allowed by a decree of this court, and ordered paid by the owners of said lots, and that in default of such payment that said lots should be sold to satisfy your orator's lien as upon execution. To the end, therefore, that your orator may be granted such relief, and any and all other relief to which in equity he is entitled, your orator prays that said defendants may answer this your orator's bill within the time limited by the decree, hereinabove described and set forth, and by their answer show, if they can, why your orator should not have the relief hereby prayed, and that they may, to the best and utmost of their several knowledge, information, remembrance, and belief, full, true, direct, and perfect answer make, though not under oath—answer under oath being hereby expressly waived—to all and singular the matters and things hereinbefore stated and charged, and that in default of such answer this supplemental cross-bill may be taken *pro confesso* and a decree rendered accordingly.

GROFF & MONTGOMERY,
Solicitors for Complainant and of Counsel.

Upon the back of said supplemental cross-bill appear endorsements in words and figures following, to wit: No. 8, doc. G. Circuit court of U. S., district of Nebraska. Thomas Bryant *vs.* George W. Frost *et al.* Supplemental cross-bill. Filed June 2nd, 1882. Elmer D. Frank, clerk. Groff & Montgomery, att'ys for complainant.

Thereupon, afterwards, to wit, on the 20th day of June, 1882, answer to supplemental bill was filed in said case; which said answer to said supplemental bill is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

MARTIN SPITLEY *vs.* GEORGE W. FROST.

Answer of George W. Frost to supplemental bill of Martin Spitley.

352 This defendant, George W. Frost, now and at all times here*in*after, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's supplemental bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, for answer [there]unto, saith that he denies that said Redick, on the 8th day of June, 1880, or at any other time, advanced to said Frost or to this respondent the sum of $636.58, or any other sum, to perfect the title to said property.

This defendant further avers the facts to be that while a suit in ejectment was pending in the district court in and for Douglas county, State of Nebraska, wherein Durant and others were plaintiffs and this respondent was defendant, and affecting the lands in controversy herein, said John I. Redick, having a pretended marshal's deed to said lands and claiming to thereby have become possessed of the interest of said Frost in said lands, was on his own motion made a party defendant in said suit and filed an answer therein, and set up a title to said land to be in himself; that in said suit said Redick was not acting as the attorney nor as the agent of said Frost, but, on the contrary, said Frost was in possession of said land and claiming title thereto, and claiming then, as this court has in this case since determined, that said Redick acquired no title to said land by reason of said marshal's deed, but that said sale was null and void; that during the pendency of said action in ejectment and after he, said Redick, had become a party defendant as aforesaid, he, said Redick, for the purpose of perfecting title in himself and for the purpose of defeating the title of said Frost, made an arrangement with the plaintiff in said suit in ejectment that he, said Redick, should pay into the hands of the clerk of said court said sum of $636.58,
353 and that said plaintiffs should accept the same and dismiss said suit, which was accordingly done.

This defendant further says that no default has been taken nor was any about to be taken in said cause as against this defendant at the time of said payment, and avers that it was not necessary that such payment should be made to perfect the title of said Frost in said land, and avers that said Frost had a good defense to said action, as he, said Redick, then well knew, and that notwithstanding said facts, said Redick secretly made said arrangement and paid said money to defeat the title of said Frost in said land and to obtain title in himself, and that this respondent first learned of said arrangement through the attorneys of the plaintiffs in said suit.

This respondent denies that said complainant succeeded to equities of said Redick, if any there be, by reason of said payment. And the said defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in the said complaint demanded, and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint.

And this defendant prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE W. FROST, *Defendant.*

WEBSTER & GAYLORD,
Solicitors for Defendant.

UNITED STATES OF AMERICA, }
District of Nebraska, } ss:

George W. Frost, being first duly sworn, deposes and says that he is the defendant named in the foregoing answer, and that he has read the same and knows the contents thereof, and that the same is

true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

GEO. W. FROST.

Subscribed in my presence and sworn to before me this
354 20th day of June, 1882.

ELMER D. FRANK, *Clerk.*

Upon the back of said answer to supplemental bill appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitley *vs.* G. W. Frost. Answer to supplemental bill. Filed June 20th, 1882. Elmer D. Frank, clerk. Webster & Gaylord.

Thereupon, afterwards, at the May term of said court, on the 9th day of September, 1882, the following proceedings were had, as appears of record on folio 839, Journal G of said court, to wit:

MARTIN SPITLEY *vs.* THOMAS C. DURANT *et al.*

On motion of J. L. Webster, sol. for respondents Frosts herein, it is ordered by the court that said respondents have leave to answer supplemental cross-bill by the 24th inst.

Thereupon, afterwards, to wit, on the 29th day of September, 1882, a replication was filed in said case, which said replication is in words and figures following, to wit:

Replication.

In the Circuit Court of the United States for the District of Nebraska.

MARTIN SPITLEY, Complainant,
vs.
GEORGE W. FROST, Respondent.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said respondent is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said an-
355 swer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

REDICK & REDICK,
Sol's for Compl't.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district

of Nebraska. Martin Spitley, compl't, *vs.* Geo. W. Frost, resp. Replication. Filed Sept. 29th, 1882. Elmer D. Frank, clerk. Redick & Redick, sol's for compl't.

Thereupon, afterwards, at the November term of said court, on the 16th day of November, 1882, the following proceedings were had in said case, as appears of record on folio 71, Journal H of said court:

MARTIN SPITLEY
vs.
THOMAS C. DURANT *et al.* } No. 8, G.

Now come the parties hereto, by their solicitors, and submit this cause to the court upon the motion of said complainant for a rehearing upon the cross-bill of Frost and the original bill of said complainant, Martin Spitley; whereupon, after hearing the argument of counsel for the respective parties, the court takes same under consideration.

Thereupon, afterwards, at the Nov. term of said court, on the 5th day of Dec., 1882, the following proceedings were had in said case, as appears of record on folio 169, Journal H of said court, to wit:

MARTIN SPITLEY *vs.* THOMAS C. DURANT *et al.*

The parties herein consenting thereto, it is ordered by the court that defendant Frost have leave to answer cross-bill in five days from this date.

356 Afterwards, to wit, on the 7th day of December, 1882, answer of Frost and wife to supplemental cross-bill was filed in said case, which said answer is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

THOMAS BRYANT, Complainant,
vs.
GEORGE W. FROST *et al.*, Respondents.

The joint and several answer of George W. Frost and Abby Frost, his wife, two of the defendants herein, to the supplemental cross-bill of Thomas Bryant.

In answer to the said supplemental cross-bill of Thomas Bryant, we, George W. Frost and Abby Frost, his wife, say that, now and at all times hereafter, saving to ourselves all and all manner of benefit or advantage of exception or otherwise that can or may be taken to the many errors, uncertainties, and imperfections in the said supplemental cross-bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say that, as to the taxes paid on each of the said lots for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, and 1875, respectively, more than five years have

elapsed since said payment of all and singular of said taxes for said years and before the filing of said supplemental cross-bill, whereby said complainant in said supplemental cross-bill is not entitled to have and maintain this his supplemental cross-bill to foreclose his pretended lien on said lots for said taxes.

These defendants, further answering, say that said pretended taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, respectively, are not a lien on said lots, for that there is not and was not an oath of the assessor either made and on file in the county clerk's office or attached to the assessment-roll containing said real estate for any or either of said years last above named, whereby said pretended assessment and levy of said taxes for said years were and are null and void.

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These defendants, further answering, say that, as to each and all of said taxes for each and all of said years, respectively, said complainant and his assignors did fail and neglect to serve upon these defendants, as the owners and occupants of said lots, and before the expiration of two years from the time of payment of said taxes, respectively, and the issuing of the tax certificates for said years, respectively, a notice, as required by the statute laws of the State of Nebraska in that behalf enacted and the constitution of the State of Nebraska, to entitle him to have and maintain this action to foreclose said taxes as a lien on said lots.

These defendants, further answering, say that said complainant should not have and maintain this action to foreclose as a lien on said lots said taxes for the year 1879, for the reason that two years have not elapsed since said lots were sold for said taxes for 1879, said sale having been made December 24th, 1880, as appears in said supplemental cross-bill.

These defendants, further answering, say that said pretended taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1876, respectively, are not a lien on said lots, for that there is no dollar mark affixed to the valuation of either of said lots for either of said years upon the assessment-rolls of either of said years, respectively, or any other mark or sign showing at what valuation either of said lots was assessed for either of said years, whereby said pretended assessment and levy of said taxes for said years were and are null and void.

These defendants, further answering, say that pretended taxes for the years 1867 and 1868 are not a lien on said lots, for that said lots were not assessed for the taxes of either of said years in the manner provided by law, in that said lots were assessed together and not separately, as by law required, whereby said pretended assessment and levy of said taxes for said years were and are null and void.

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These defendants, further answering, say that said pretended taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, and 1879, respectively, upon said lot 4, block 52, are not a lien upon said lot 4, for that said lot 4 was not assessed for taxation for either of said years, as appears by the assessment-rolls

for said years, respectively, whereby said pretended levy and assessment of taxes upon said lot 4 for said years were and are null and void.

These defendants, further answering, say that there were carried upon the tax-list of the year 1869 by the county clerk and against said lots certain State taxes amounting to the sum of about $34.85, and the collection of which taxes was enforced against said lots, and which are a part of the taxes for which said complainant claims a lien upon said lots.

But these defendants aver that no levy of said State taxes for the year 1869 was ever made, and the same were carried upon the tax-list for said year without any authority so to do, whereby the collection of such taxes was and is null and void, and said complainant has no lien upon said lots therefor.

These defendants, further answering, say that there were carried upon the tax-list for the years 1869, 1870, and 1871, respectively, by the county clerk and against said lots certain "county district school fund" taxes amounting to the sum of about $125.25, and the collection of which taxes was enforced against said lots, and which
359 are a part of the taxes for which said complainant claims a lien upon said lots, but these defendants aver that no levy of said "county district school fund" taxes was made for either of said years, and said taxes were carried upon the tax-lists for said years without any authority so to do, whereby the collection of said taxes was and is null and void, and said complainant has no lien upon said lots therefor.

These defendants, further answering, say there was carried upon the tax-list for the year 1870 by the county clerk and against said lots "certain county sinking R. R. bond fund" taxes amounting to the sum of $29.20, and the collection of which taxes was enforced against said lots, and which are a part of the taxes for which said complainant claims a lien upon said lots; but these defendants aver that no levy of said "county sinking R. R. bond fund" taxes was made for said year, and that said taxes were carried upon the tax-list for said year without any authority so to do, whereby the collection of said taxes was and is null and void, and said complainant has no lien upon said lots therefor.

These defendants, further answering, say that as to all the county taxes for each and all of said several years in complainant's said supplemental cross-bill mentioned and set out, the same are excessive, in this, that the pretended levy of taxes for all and singular said years was in excess of the amount of taxes that the county commissioners were authorized under the laws of the State of Nebraska in that behalf to so levy against said lots.

These defendants, further answering, say that the taxes, as the same appears on the tax-lists as against said lots for said several years, did not amount to the sums of money for any of said years as said complainant hath in his supplemental cross-bill averred as having been paid by him or paid by his assignors; and these defendants, upon information and belief, aver that said complainant and his assignors did not pay the several sums of money in his

said supplemental cross-bill set forth as taxes on said lots, and these defendants deny, upon information and belief, that any taxes paid by other parties than complainant were ever assigned to said complainant, and as said complainant hath not set forth in his bill which of said taxes were paid by him, and which were paid by other parties and assigned to him, and who paid said taxes and so assigned the same to him (except) for the taxes of 1879, *whereby* these defendants are unable to make any more complete answer in this respect, and ask that said complainant be put upon his proof of the payment of said taxes and of the amount of said payments and as to who made such pretended assignments to complainant of taxes paid.

Said defendants further say that during all and singular of said years they and each of them had within the county of Douglas sufficient personal property out of which the tax collector could have made and collected said taxes, and that by reason whereof, and by reason of the many imperfections and irregularities hereinbefore stated as to said taxes, said sales of said lots for taxes were unauthorized and null and void; whereby said complainant is not entitled to have and recover more than one per centum per month interest on any taxes so paid.

These defendants are informed and believe that a large part of the sums of money claimed by complainant as having been paid by him and his assignors as taxes on said lots were city taxes of the city of Omaha, but in what sums these defendants are now unable to say, as complainant hath not in any manner averred or itemized what, if any, of said taxes were such city taxes; but these defendants aver that all of said city taxes were not levied, but were carried on to the city tax-list without any authority of law, and that all of said city taxes were and are null and void.

And these defendants, further answering, deny that the said complainant is entitled to the relief or any part thereof in his said supplemental cross-bill of complaint demanded; and these de-
361 fendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said supplemental cross-bill of complaint; and these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE W. FROST AND
ABBY B. FROST,
Defendants,
By WEBSTER & GAYLORD,
Their Solicitors.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Thomas Bryant *vs.* George W. Frost *et al.* Answer of Frost and wife to supplemental cross-bill. Filed Dec. 7th, 1882. Elmer D. Frank, clerk. Webster & Gaylord, sol's for Frost & wife.

Thereupon, afterwards, on the 27th day of Dec., 1882, a replication to answer of Frost to supplemental cross-bill was filed in said case; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

THOMAS BRYANT
vs.
GEORGE W. FROST *et al.* } No. 8, G.

The replication of Thomas Bryant, complainant, to the answer of George W. Frost and Abby B. Frost, defendants.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says that *they* will aver, maintain and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and
362 sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

GROFF & MONTGOMERY,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. In equity. Thomas Bryant *vs.* George W. Frost *et al.* Replication to answer of Frost to supplemental cross-bill. Filed Dec. 27th, 1882. Elmer D. Frank, clerk. Groff & Montgomery, sol's for plaintiff.

Thereupon, afterwards, to wit, on the 29th day of Dec., 1882, an answer of Martin Spitley to supplemental cross-bill was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska In Chancery.

The answer of Martin Spitley, one of the respondents to the supplemental cross-bill filed herein by Thomas Bryant, complainant.

This respondent, now and at all times hereafter, saving and reserving unto himself all and all manner of benefit or advantage which may or might be had or taken to the many uncertainties, insufficiencies, and imperfections of said supplemental cross-bill, by

way of exception or otherwise, for answer thereto, or to so much thereof as he is advised is necessary for him to make answer unto, answering, saith:

Respondent admits that an original bill was filed herein by Martin Spitley at the time, and having for its object the quieting the title of said lots 3 and 4, as in said cross-bill is alleged; that
363 said Bryant and said Frosts also filed cross-bills therein, as therein set forth; that issues were joined therein, and that on May 4th, 1882, final decree — had and entered herein, as in said cross-bill is alleged, and admits that said cross-bill of said Bryant was based upon certain deeds which were by said decree held invalid, and that said supplemental cross-bill of said Bryant was filed by leave of court, as in said cross-bill said complainant alleges.

Respondent admits that at the dates specified in said cross-bill there was paid by said complainant Bryant, and by others, who, prior to the commencement of the original action herein, had assigned their claims by reason of such payment to him, said Bryant, the amount on the property for the years and at the date specified and alleged in said cross-bill, and admits that said payments were made under the provisions of the revenue act of the State of Nebraska pursuant to the tax sales, which, by said decree, were held invalid, as in and by said cross-bill it is alleged; but this respondent denies that said payments on said lot 3, of date Nov. 15th, 1876; Dec. 15th, 1873; Sept. 9th, 1874; June 4th, 1875; July 14th, 1876, were made within five years next preceding the date of the filing of said supplemental cross-bill, and therefore pleads the statutes of limitation in bar of so much thereof.

Respondent denies that said payments on said lot 4, of date Nov. 15th, 1876; Dec. 23, 1875; Sept. 3d, 1873; Sept. 9th, 1874; June 14th, 1875; July 31st, 1877, and April 29th, 1876, were made within five years next preceding the date of the filing of said supplemental cross-bill, and therefore pleads the statute of limitation in bar of so much of said claim.

Respondent denies that said payments or any of them are or should be held a lien upon said property.

Further answering, these respondents say that more than five years have elapsed since the date of said certificates and each of
364 them, and had elapsed before the bringing of said cross-action of said Bryant, and therefore replead the statute of limitation in bar of said action of said Bryant.

That the said action of said Bryant *for* foreclose his said alleged lien was not brought within five years from the date of said sales, or either of them, in said cross-bill alleged, nor until after five years had elapsed from the date of said certificates, as well, also, as from the dates of said payments; wherefore this respondent alleges that the statute of limitations has barred said claim and action.

Respondent further alleges that more than four years had elapsed at the time of bringing of said cross-action of said Bryant since said alleged cause of action of said Bryant accrued, and therefore repleads the statute of limitations in bar thereof.

And this respondent, further answering, saith he has no knowl-

edge as to whether said lots were sold to one Noyes on Dec. 24th, 1880, for the delinquent taxes of 1879, or whether said Noyes signed his certificates of said sale to said Bryant, or whether he ever had any such certificates, or whether said Noyes paid at such alleged sale on lot 3 $53.65, and lot 4 $118.56, or as to what said amounts include, or whether said lots were redeemed from said alleged sale, except from the allegations of said cross-bill, and therefore denies the same and prays that said complainant may be put upon his proof in that behalf.

Respondent avers the truth to be that he is the owner in fee-simple of said property in said cross-bill described, divested of all claims or liens *and* any kind or nature, and denies that said complainant has any claim, right, or lien upon or against the same by virtue of the facts alleged in said cross-bill or otherwise.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he may by said cross-bill stand charged, without this, that there is any other matter, cause, or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and
365 hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this respondent; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

MARTIN SPITLEY.

REDICK & REDICK,
His Solicitors.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 8, G. Circuit court of U. S., district of Nebraska. Thomas Bryant, compl't, *vs.* George W. Frost *et als.*, resp'd'ts. Answer of Martin Spitley to supplemental cross-bill. Filed Dec. 29th, 1882. Elmer D. Frank, clerk. Redick & Redick, sol's for resp'd't Spitly.

Thereupon, afterwards, to wit, on the 29th day of December, 1882, replication of Bryant to answer of Martin Spitley was filed in said case; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

THOMAS BRYANT
vs.
GEORGE W. FROST *et al.* } No. 8, G.

The replication of Thomas Bryant, cross-complainant, to the answer of Martin Spitley, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of ex-

ception which may be had or taken to the manifold insufficiencies of said answer, for replication thereto says that *they* will aver, maintain, and prove his said cross-bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of said defendant is untrue, uncertain, and insufficient to be
366 replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill of complaint he has already prayed.

GROFF & MONTGOMERY,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. In equity. Thomas Bryant *vs.* George W. Frost *et al.* Replication of Bryant to answer of Martin Spitley. Filed Dec. 29th, 1882. Elmer D. Frank, clerk. Groff & Montgomery, solicitors for plaintiffs.

Thereupon, afterwards, to wit, on the 1st day of March, 1883, an opinion was filed in said case; which said opinion is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.
February, 1883. Equity.

MARTIN SPITLEY *vs.* GEORGE W. FROST *et al.*

Upon rehearing, the controlling question in this case is whether the sale of real estate in controversy, under the judgment of this court in a case in which John I. Redick was plaintiff and the respondent, Geo. W. Frost, alone was defendant, rendered in a suit in attachment, was a valid sale. The premises had been levied upon by writ of attachment at the commencement of the suit, and upon final hearing there was judgment, with an order for the sale
367 of the attached property under a special execution.

The contention of the respondents, George W. Frost and wife, in the present case is that the levy and sale were void because the premises were their homestead, and therefore exempt from judicial sale under the laws of Nebraska. After the sale under the execution in the case of Redick *vs.* Frost, a motion was made to confirm the same, which motion was opposed by Frost on the ground, among others, that the premises constituted his homestead; but the sale was nevertheless confirmed. Subsequently the said George W. Frost moved the court to set aside the sale on several grounds, and among them upon the ground that the premises constituted his homestead and were therefore exempt. Thereupon the court referred the case to a referee to take testimony upon the question of

homestead, and testimony upon both sides was accordingly taken and a report thereon was made; upon consideration of which the court overruled the motion to set aside the sale.

The controlling question in the present case is whether the judgment of the court confirming the sale and overruling the motion to set the same aside is a final adjudication of the homestead question, by which the parties are bound and which estops the present defendants to claim the property as a homestead.

McCRARY, *Circuit Judge:*

Upon the former hearing it was assumed that the question whether the premises in controversy were exempt as the homestead of respondents Frost and wife was a question arising under the provisions of an act of the Legislature of Nebraska entitled "An act to exempt homesteads from judicial sale," approved February 19th, 1877; and as that act vested the homestead right in the husband and wife jointly, and expressly provided that no conveyance of encumbrance of the homestead should be of any validity unless executed by both, it was held that the wife was a necessary party to any proceeding to subject property claimed as a homestead to judicial sale. It resulted from this ruling that, in the judgment of the court, the respondents Frost and wife were
368 entitled to a decree setting aside the sale under execution of the premises in question, notwithstanding the confirmation of that sale by this court in a proceeding in which the wife was not joined with the husband as a party. If there was no error in assuming that the act of 1877 was the governing statute I am of the opinion that the former ruling was entirely correct. But it is now suggested that an earlier homestead act, that of 1866, being the act in force when the contract was entered into, is the governing statute, and that under that statute the wife had no vested interest in the homestead independent of her husband, and was, therefore, not a necessary party to any judicial proceeding relating to it. (General Statutes, page 616.) It is true that the last-named act, which was the homestead law in force when the contract was made, only exempted the homestead owned "by the head of the family." It did not provide, as the more recent act does, that the homestead of the family, whether owned by the husband or wife, should be exempt; nor did it contain the provision, now found in most homestead laws, that no deed or mortgage of the homestead shall be of any validity unless executed by both husband and wife, if both are living. Under this statute, had the wife an interest in the homestead which could not be divested in a proceeding against the husband alone, the title being in him? Both upon authority and principle I am constrained to hold that where the wife has no power to prevent the voluntary alienation of the homestead by the husband she is not a necessary party to a proceeding to subject it to judicial sale, or to determine whether a given piece of property is a homestead. The cases cited in the former opinion, and other like cases, in which it is held that the wife is a necessary party to any judicial proceeding affecting the homestead, are all, it is believed, cases which arose

under statutes conferring homestead rights upon the wife and placing those rights beyond the control of the husband. The statute now under consideration does not do this. It provides only
369 for the exemption of a homestead to be selected by the owner, "so long as the same shall be owned and occupied by the debtor as such homestead." The wife is not mentioned in the act; and, however vital her interest in the home may be, we cannot hold that she has, in the absence of a statute to confer it, any legal interest in the property of the husband such as to make her a necessary party to any proceeding touching the title of possession.

It has been repeatedly held by the supreme court of Nebraska that the wife has no control over the homestead and no legal interest therein under the statute in question. Thus, in Rector *v.* Bottom, 3 Neb., 171, it was held that the homestead right under that statute was a purely personal one, which the owner could at any time waive or renounce, and that it was lost by a failure of the owner at the time of a levy upon it to notify an officer of what he regards as his homestead. It was there held also that the exemption was a right guaranteed to the head of the family, who was at perfect liberty to sell the homestead or pledge it for the payment of his debts if he chose to do so.

"The Legislature," says the court by Lake, C. J., "never intended to assume a guardianship over the owner of the homestead and render him disqualified to make valid contracts respecting it. It imposes no restraint upon him whatever in this respect; even the wife, when the title is in the husband, has no power to prevent him from making such disposition of it as he may think best." The same language is repeated in State Bank *v.* Carson, 4 Neb., 501. Accepting, as we are bound to do, this construction of the statute, we are unable to perceive any satisfactory ground for holding that a court of competent jurisdiction may not dispose of the question of homestead arising under it in any case where it properly arises, and to which the owner of the homestead is a party. It is only for the reason that the husband is by law deprived of the power to dispose of or encumber the homestead without the wife's concurrence that it has been held under some statutes that the presence of both
370 before a court is necessary to the jurisdiction of the court over the question of homestead rights.

The court, in which a case affecting the homestead is pending, may exercise such power only as the parties before it might, in the absence of judicial proceedings, exercise over the subject-matter. If the husband alone is in court, the power of the court is limited to his interest, and where this cannot be divested without the presence of the wife, the court is powerless; but where the entire control of the homestead is vested in the husband, the wife's presence as a party in court is not necessary.

It is insisted that the statute that we are considering does not govern the decision of this case. It is conceded that it was in force when the contract was entered into, but a later act (that of 1877) was enacted after the contract was made and before the judgment was obtained or the sale made. This latter act, it is said, ought to

be adopted as the law of this case, for the reason that it does not enlarge but diminishes the amount of the homestead exemption. By the former act the value of the exempted property was left with no limit; by the latter it is limited to $2,000. By the former, as we have seen, the exemption was for the benefit only of the head of the family, and the property was left under the entire control of the owner; by the latter it is for the benefit of the family, and the wife is given a vested right in and control over the homestead. Counsel have discussed the question whether this last act can be applied to pre-existing debts without impairing the obligation of contracts. In one respect the homestead exemption is very much enlarged by the act of 1877, which extends the benefits of the exemption to the wife and makes her consent necessary to its alienation, and there is force in the suggestion that to apply the latter act to the determination of this case, under the existing circumstances, would very seriously impair the rights of the complainant. This question does not, however, necessarily arise, and it is not decided.

371 The act of 1877 does not purport to be retroactive, and should, therefore, not be held to be so. It is only where the intent of the Legislature to make an act retrospective is plainly expressed that courts will undertake to apply it to antecedent contracts, and determine whether it impairs their validity. If consistently with the terms of this act it can be made to apply only to subsequent contracts it should be so construed. Thompson on Homesteads and Exemptions, sec. 9. The supreme court of Nebraska has accordingly held that the homestead law in force when the contract was made is to govern. Darrington *v.* Meyers, 9 N. W. Rep., 555. This ruling is binding upon this court, and is, besides, in accordance with our view of the law.

We are thus brought to the conclusion that the act of 1866, which was in force when the contract was made, entered into and became a part of it, and must be looked to as determining the rights of the parties under it.

In this view of the case we are again to consider whether the homestead question was finally adjudicated and settled in the case of Redick *vs.* Frost; and it is a wholly different question from the one considered and decided upon the former hearing, because it must now be discussed in view of the fact now ascertained that Frost, the husband and owner of the homestead, was the only necessary party to the proceeding. It is undoubtedly true that if the court had jurisdiction to pass upon the question of homestead, and did pass upon it by a final order, the judgment not having been appealed from, is final. The statute of Nebraska provides that upon the return of any writ of execution upon which real estate has been sold, the court shall carefully examine the proceedings of the officer, and if satisfied that the sale in all respects has been made in conformity to the statute, shall direct the clerk to make an entry on the journal that the court is satisfied of the legality of the sale, and an order that the officer make to the purchaser a deed, &c. General Statutes of 1873, sec. 498.

question of homestead adversely to the respondent Frost. If the sale had been set aside by the court without specifying upon which ground, it might have been contended that the decision of the court did not necessarily involve a determination of the question of exemption; but, since the sale was confirmed, it must have been because, in the judgment of the court, none of the grounds urged against the validity of the sale were good. If the court had not decided this question of exemption against the right claimed it could not have confirmed the sale. The case comes, therefore, clearly within the doctrine of *res adjudicata*.

The question now before us arose in a former case between the same parties or their privies. It was properly presented to the court, testimony was taken, a hearing was had, and a final order was made.

The orders heretofore made respecting the issues upon the cross-bill of respondent Bryant are to stand without modification.

If respondents, George W. and Abby B. Frost, desire an appeal, the same will be granted upon proof that the property is worth more than $5,000, and the bond for costs will be fixed at $500.

Upon the back of said opinion appear endorsements in words and figures following, to wit: No. 8, G. In the circuit court of the U. S., district of Neb., Feb., 1883. Martin Spitley *vs.* George W. Frost *et al.* Equity. Upon rehearing. Opinion. McCrary, circuit judge. Filed March 1st, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 20th day of March, 1883, a motion to amend decree was filed in said case, which said motion is in words and figures following, to wit:

376 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

MARTIN SPITLEY *vs.* GEO. W. FROST *et al.*

Now comes the complainant and moves the court for an order directing these words to be added to the decree rendered herein on the 23 day of February, 1883, and before the same is filed of record, viz: "And that the complainant be let into possession of said premises as against the Frosts upon the production to them of a certified copy of this decree."

REDICK & REDICK,
Solicitors for Complainant.

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitley *vs.* Geo. W. Frost *et al.* In equity. Motion to amend decree. Filed March 20th, 1883. Elmer D. Frank, clerk, by A. L. Frank, deputy. Redick and Redick, sol's for comp't.

Thereupon, afterwards, at the January term of said court and on the said 20th day of March, 1883, the following proceedings were

had in said case, as appears of record on folios 497 and 498, Journal H of said court, to wit:

MARTIN SPITLEY
vs.
GEORGE W. FROST *et al.* } No. 8, G.

Now come the parties hereto, by their solicitors, and in open court agree to have interlined in the decree signed by the Hon. George W. McCrary, circuit judge, the following words, to wit: "And that the complainant be let into possession as against George W. Frost and Abbie B. Frost upon the production to them of a certified copy of this decree by the marshal of the United States for the district of Nebraska." And, upon motion, it is thereupon ordered by the court that the record of former entry of said decree be, and the same is hereby, vacated and set aside.

377 *Decree.*

MARTIN SPITLEY *vs.* GEO. W. FROST *et al.*

And now, this cause coming on to be reheard upon the bill of Martin Spitley, complainant, and the cross-bill of Geo. W. Frost and Abby B. Frost, his wife, and the answers thereto, respectively, and upon the report of D. G. Hull, the master to whom this case was heretofore referred, and upon the exceptions to said report, and after full rehearing of the said parties, it is ordered, adjudged, and decreed that the decree rendered herein at the May term, 1882, of this court be, and the same is hereby, set aside in so far as the issues joined upon the above-mentioned bill and cross-bill and the answers thereto are concerned. It is further ordered, adjudged, and decreed that the title of the complainant, Martin Spitley, in and to the property in controversy, to wit, lots 3 and 4, in block 52, in the city of Omaha, Douglas Co., Nebraska, be, and the same is hereby, quieted in the said complainant, Martin Spitley, his heirs and assigns, as against all claim of the said George W. Frost and Abby B. Frost, and that the complainant be let into possession as against Geo. W. Frost and Abby B. Frost upon the production to them of a certified copy of this decree by the marshal of the United States for the district of Nebraska.

It is further ordered that the aforesaid decree rendered at the May term, 1882, in so far as it relates to the issues joined upon the cross-bill of Thomas Bryant, shall remain in force and stand as the decree of the court. It is further ordered, adjudged, and decreed that the respondents, Geo. W. Frost and Abby B. Frost, pay the costs of this suit, except such as are made by reason of the cross-bill of Thomas Bryant.

February 23d, 1883.

(Signed) GEO. W. McCRARY,
Circuit Judge.

Q. Endorsement of what?

Defendant Redick objects to giving the contents of the endorsement, if it was in writing, without giving the paper itself.

382 Q. How was it endorsed?

A. My recollection is that it was endorsed by Saterthwaite, per Reuben Allen, agent.

Q. On what part of the certificate?

A. On the back of the certificate.

Q. Any other interest of a like nature?

A. Yes, two certificates; they were endorsed to me by J. C. Noyes for the taxes of 1877 on both lots—three and four.

Q. What became of these certificates?

A. These certificates were turned over to the county treasurer, upon which he issued a deed to myself.

Q. Have you any further interest of a similar nature?

A. Also a certificate on lots three and four, for State, county, and city taxes for the year 1879, which were endorsed to me.

Defendant Redick objects to all this testimony touching upon the purchase of these receipts or certificates, both in regard to these and prior certificates, on the ground that it is not the best evidence.

Q. Are these the certificates? (Indicating certificates additional to those already in evidence.)

A. They are.

Q. Are you acquainted with the signature of J. C. Noyes?

A. I am.

Q. Will you state if that is his signature on the back of these certificates?

A. That is, sir.

Complainant offers in evidence the two certificates identified by the witness. Objected to by defendant Redick as incompetent, immaterial, and not the best evidence. The certificates are hereto attached, marked exhibits 18 and 19.

383 Q. On what consideration did Mr. Saterthwaite endorse to you the certificate for the taxes of 1871 on lot 4, and J. C. Noyes endorse to you the certificates for taxes for 1877 and 1879, to which you refer?

Objected to by defendant Redick as immaterial.

A. It was for money.

Q. At the time this case was for hearing on the original cross-bill before Master Hull there was introduced in evidence two redemption certificates for taxes for 1878, one to J. W. Gannett; please state what your object was in receiving those lots if you did redeem them as stated in these certificates.

Defendant Redick objects to the question as immaterial.

A. Mr. Gannett purchased these lots at private sale, I think. I asked him to transfer these certificates to me upon the payment of

the money and interest at the regular rate of interest that they were drawing. He at first promised to do so, but afterwards refused, and I then redeemed them to protect myself.

Q. State what, if anything, has ever been offered or tendered to you by the defendants or any of them, on this cross-bill, for settlement of your claims in these lots.

Defendant Redick objects as immaterial.

A. There was no definite offer ever made to me for the interests that I held in these lots that I remember of, but I think there was one or two conditional offers made, which I could not accept, to the best of my recollection.

Q. State what these conditional offers were.

A. I believe that Mr. Redick made a conditional offer of ten per cent. per annum for the time the certificates had to run, if I would take in payment some land at a certain price.

Q. Did anybody ever offer you any definite amount of money?

A. Not that I remember of.

384 Q. What has been your position during the time this case has been pending, from its original commencement and prior thereto, regarding the settlement of these tax claims?

Defendant objects without stating grounds.

A. I don't know at what time I did make the offer, but prior to the time that this suit was commenced I would have been willing to take the taxes and 12 per cent. interest.

Cross-examined by Mr. REDICK:

Q. These tax receipts you have spoken about you state that you looked after them and was unable to find them, I suppose that they included other tax amounts?

A. I don't know.

Q. Where are they, do you think?

A. I could not say.

Q. Where did you look for them?

A. All through my papers.

Q. You don't know the amount of them, do you?

A. I could not state positive from my recollection.

Q. Don't you keep your tax receipts all in one bundle?

A. Not always.

Q. Where was Mr. Noyes when he assigned you that certificate?

A. In Oshkosh.

Q. Were you there at the time?

A. No, sir.

Q. Did you know him before that?

A. Yes, sir.

Q. How often did you ever see him write?

A. I have received letters from him probably once a month or so.

Q. Were you there when Mr. Satterthwaite transferred his title through his agent, Allen?

385 A. He transferred it through his agent, Allen.

Q. What did you do with your certificates?

A. I turned them over to the county treasurer.

Q. About those receipts which were lost; you looked through your banking-house carefully for them?

A. Yes, sir.

Q. And could not find them?

A. Yes, sir.

Q. Will you swear that I did not make you a square-toed offer of ten per cent. interest on your taxes?

A. When did you make me the offer?

Q. I can't remember?

The WITNESS: About when?

Mr. REDICK: A good while ago. I will say it was when I got my decree in the district court and bought out the claim of the U. P. road on the Frost property—about 1881, just before this case was commenced; call it the year 1881.

A. I don't remember of you ever making me that offer.

The signature of the deposition is waived by consent of all parties.

The counsel for defendants are hereby notified by counsel for complainant that upon the hearing of this cross-bill they will refer to the papers, deeds, and records heretofore offered, together with the records on file in the clerk's office.

I, John T. Bell, examiner in equity in the United States circuit court for the district of Nebraska, do hereby certify that I was attended at my office in Omaha, Nebraska, on the 16th day of March by the parties above named in the caption hereof; that the said deposition was taken in my presence by Charles A. Potter, a disinterested person, from the statements of the witness; that the exhibits hereto attached were introduced in evidence by the complainant, and that the signature to the said deposition was waived by consent of both sides. I further certify that I am not of counsel or related to either party in this suit, and that I have no interest in the event thereof.

JOHN T. BELL,
Examiner in Equity.

Examiner's fees, $4.55. Paid by pl'ff.

386 EXHIBIT 1.

$181.90. OMAHA, *Nov. 15th*, 1876.

Received of Thomas Bryant, holder of tax title, one hundred eighty-one & $\frac{90}{100}$ dollars in full of the following taxes for the year 1867 on the annexed property or real estate:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3 & 4	52			State gen'l fund	15 00		15 30	
					State sink'g fund	9 00		9 18	
					State school	12 00		12 24	
					Co. sink'g bond	12 00		12 24	
					Co. gen'l fund	18 00		18 36	
					Co. sinking fund	9 00		9 18	
					Land, road				
					Poll tax				
					Poor fund	12 00		12 24	
					Dist. school				
					Court-house	3 00		3 06	
					Advertising			10	
					Total	90 00		91 90	181 90

(Original.)

A. C. ALTHAUS, *Treasurer.*
—— ——, *Deputy.*

387 EXHIBIT 2.

$102.70. OMAHA, *Nov. 15th*, 1876.

Received of Thomas Bryant, holder of tax title, one hundred two & $\frac{70}{100}$ dollars in full of the following taxes for the year 1868 on the annexed property or real estate:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3 & 4	52	---	---	State gen'l fund	9 00	---	8 10	
					State sink'g fund	4 50	---	4 05	
					State school	6 00	---	5 40	
					Co. road and bridge	6 00	---	5 40	
					Co. general fund	19 50	---	17 55	
					Co. sinking fund	75	---	68	
					Land, road tax				
					Poll				
					Poor fund	7 50	---	6 75	
					Dist. school				
					Court-house	75	---	67	
					Advertising				
					Total	54 00	---	48 70	102 70

(Original.)

A. C. ALTHAUS, *Treasurer.*
——— ———, *Deputy.*

388 EXHIBIT 3.

$295.78. OMAHA, *November 15th*, 1876.

Received of Thomas Bryant, holder of tax title, two hundred ninety-five & $\frac{78}{100}$ dollars in full of the following taxes for the year 1869 on the annexed property or real estate:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	12 30		9 59	43 35
	4	52			State sinking fund	6 15		4 80	252 43
					State school	8 20		6 40	
					Road and bridge	8 20		6 40	
					Co. sinking fund bond	16 40		12 79	
					Co. gen'l fund	32 80		25 58	
					Land. road				
					Poor fund	8 20		6 40	
					Dist. school	65 60		51 17	
					State university	8 20		6 40	
					Poll				
					Dog				
					Advertising			20	
					Total	166 05		129 73	295 78

(Original.) A. C. ALTHAUS, *Treasurer.*

389 EXHIBIT 4.

$278.91. No. 3140.

TREASURER'S OFFICE, DOUGLAS CO., NEBRASKA,
OMAHA, *Nov. 15th*, 1876.

Received of Thomas Bryant, holder of tax title, two hundred and seventy-eight & $\frac{91}{100}$ dollars in full of following taxes for the year 1870 on the annexed property or real estate:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52			State gen'l fund	14 60		9 64	68 82
	4	52			State sink'g fund	3 65		2 41	210 09
					State school	14 60		9 64	
					State university	7 30		4 82	
					Co. gen'l fund	21 90		14 45	
					Co. special sin. fund	7 30		4 81	
					Co. sinking bond fund	7 30		4 81	
					Co. sin. R. R. bond fund	29 20		19 27	
					Road fund				
					Road and bridge	7 30		4 82	
					Poor fund	7 30		4 82	
					Dist. school	47 45		31 32	
					Poll				
					Dog				
					Advertising			20	
						167 90		111 01	278 91

(Original.) A. C. ALTHAUS, *Treasurer*.

390 EXHIBIT 5.

$56.75. No. 3453.

TREASURER'S OFFICE, DOUGLAS CO., NEB.,
OMAHA, *November* 15, 1876.

Received of Thomas Bryant, holder of tax title, fifty-six & $\frac{75}{100}$ dollars in full of the following taxes for the year 1871 on the annexed property or real estate:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52	--	--	State gen'l fund	4 00	---	2 16	
					State sink'g fund	1 60	---	86	
					State school	3 20	---	1 73	
					State norm-l school	80	---	43	
					Co. gen'l fund	4 80	---	2 59	
					Co. special sin. fund	80	---	43	
					Co. sin'g bond fund	80	---	43	
					Co. sin. R. R. bond fund	9 60	---	5 18	
					Co. sin. R. R. b'dg-fund	4 80	---	2 59	
					Road fund				
					Road and bridge	1 60	---	86	
					Poor fund	1 60	---	86	
					Dist. school	3 20	---	1 73	
					Poll				
					Dog				
					Advertising	---	---	10	
					Total	36 80	---	19 95	56 75

(Original.) A. C. ALTHAUS, *Treasurer*

Received of Thomas Bryant three thousand two hundred and fifty one and $\frac{42}{100}$ dollars in full of the following taxes for the year 1872 on the annexed property or real estate:

Part of section or name of town.	Lot	Block.	Lot.	Block.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	5	19	8	78, W. $\frac{1}{2}$	5	119, N. $\frac{1}{2}$	5	153	State gen'l fund		380 44	15 22	
	3	26	2	79, M. 25 ft., N. $\frac{1}{2}$	1	120	7	163	State sinking fund	152 18		6 09	
	7	45	2	82, M. $\frac{1}{2}$	3	121	8	163	State school	304 36		12 18	
	8	45, N. 48 ft.	8	86, W. $\frac{1}{2}$	2	124	3	165	State university	37 93		1 52	
	3	47	5	87, N. $\frac{1}{2}$	8	135, N. $\frac{1}{2}$	8	165	County gen'l fund		508 72	24 35	
	6	48	8	87, E. $\frac{1}{2}$	4	136, W. $\frac{1}{2}$	12	166	Co. special sinking fund	76 08		3 04	
	2	49	1	88, S. $\frac{1}{2}$	8	136, E. $\frac{1}{2}$	6	166	Co. s'k'g R. R. bond fund	913 08		36 52	
	6	51, E. 22 ft.	5	88, E. $\frac{1}{2}$	3	138	1	167	Co. s'kg. R.R. bridge bond	456 54		18 26	
	4	52	1	90	7	138	7	167	Road fund				
	4	54	3	103	6	139	6	169	Road & bridge	152 18		6 09	
	E. $\frac{1}{2}$ 7	54, E. $\frac{1}{2}$	3	105	3	141	12	171	Poor fund	37 93		1 51	
	2	57, E. $\frac{1}{2}$	7	105, E. $\frac{1}{2}$	2	147, E. $\frac{1}{2}$	4	171	Dist. school				
	W. 30 ft., 3	58, W. $\frac{1}{2}$	7	106, W. $\frac{1}{2}$	3	147	6	171	Poll				
	6	58	4	108	4	147	5	172					
	4	59	7	116, E. $\frac{1}{2}$	2	150	7	172					
	5	70, E. $\frac{1}{2}$	1	118, E. $\frac{1}{2}$	3	150	8	172					
	7	74, W. $\frac{1}{2}$	2	118	3	151, W. $\frac{1}{2}$	12	177	Advertising			7 20	
	7	78, W. $\frac{1}{2}$	3	118, E. $\frac{1}{2}$	6	152, E. $\frac{1}{2}$	12	177					
									Total	2,130 28	989 16	131 98	$3,251 42
									5 %				162 57
									Certificates				36 00
													$3,449 99

(Sold at public sale.) (Original.)

E. C. McSHANE, *Treasurer.*

OFFICE OF COUNTY TREASURER, DOUGLAS COUNTY, NEB., OMAHA, *June 4th*, 1875.

Received of Thos. Bryant, holder of tax title, four hundred twenty-five & $\frac{45}{100}$ dollars in full of the following taxes for the year 1874 on the annexed property or real estate:

Am'ts paid.	Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total original tax.
11 11	S. ½ N. W. ¼	20	15	10		State gen'l fund	45 21	74. Sale.	.45	11 00
15 96	N. ½ N. E. ¼	20	16	10		State sinking fund	18 08		.18	15 80
26 37	S. E.	11	15	11		State school fund	36 16		.36	26 11
29 08	S. W.	18	16	11		State university fund	4 52		.05	28 79
8 52	E. ¼ S. E.	21	16	11		State penitentiary	9 04		.09	8 44
8 52	E. ¼ S. E.	28	16	11		County gen'l fund	90 44		.90	8 44
15 70	S. W.	30	16	18		County spec'l sinking fund	9 04		.09	15 54
8 52	N. ¼ N. W.	21	16	11		R. R. bond sinking fund	81 38		.81	8 44
27 27	N. W.	7	16	12		R. R. bridge b'd s'k'g fund	45 21		.45	27
30 49	Omaha	3	52			Road & bridge fund	18 08		.18	30 19
67 07		4				Poor fund	4 52		.05	66 41
58 94		5	76			Asylum	2 26		.02	58 36
24 39		8	93			Road	25 17		.25	24 15
93 51	E. ¾ of	1	118			Dist. school	32 14		.32	92 58
						Poll				
						Dog				
						Advertising				
						Total	421 25		4.20	425 45

(Original.)

A. C. ALTHAUS, *Treasurer.*

GEORGE W. FROST ET AL. VS. MARTIN SPITLEY.

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393 EXHIBIT 8.

$81.60. No. 2788.

OFFICE OF COUNTY TREASURER,
DOUGLAS COUNTY, NEB., OMAHA, *July* 31*st*, 1877.

Received of Thomas Bryant, holder of tax title, eighty-one and $\frac{60}{100}$ dollars in full of the following taxes for the year 1876 on the annexed property or real estate:

Part of section or name of town.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
Omaha	3	52		State gen'l fund, 4	16 00		32	24 48
	4	52		State sink'g fund, $\frac{3}{4}$	3 00		06	57 12
				State school fund, 1	4 00		08	
				State university fund, $\frac{1}{4}$	1 00		02	
				State penitentiary, 1	4 00		08	
				State bond fund, $\frac{1}{10}$	40		01	
				Co. gen'l fund, 5	20 00		40	
				R.R. bond sink'g fund, 4	16 00		32	
				R. R. bridge b'd sin. f'd, 2	8 00		16	
				Bridge fund, $1\frac{65}{100}$	6 60		13	
				Asylum fund, $\frac{1}{4}$	1 00		02	
				Road fund				
				Dist. school				
				Poll				
				Dog				
				Advertising				
				Total	80 00		1 60	$81 60

Entered on sales book for 1873.
(Original.)

A. C. ALTHAUS, *Treasurer.*

394 EXHIBIT 9.

$131.81. No. 3713.

OFFICE OF COUNTY TREASURER,
DOUGLAS COUNTY, NEB., OMAHA, *Nov. 6th*, 1878.

Received of J. C. Noyes one hundred thirty-one & $\frac{81}{100}$ dollars in full of the following taxes for the year 1877 on the annexed property or real estate:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	Kind of tax.	Paid in cash.	In warrants.	Interest.	Total.
S. E. N. E.	10	16	13	40	State gen'l fund, 4	24 44		1 47	5 21
W. part W. ½ N. W.	36	16	13	50	State sink'g fund, ⅝	5 35		32	10 94
Omaha, N. 28 ft.	1	43			State school fund, 1	6 11		37	8 40
S. 38 of N. 66 ft.	1	43			State university fund, ⅛.	2 29		14	8 05
S. ½	1	43			Co. general fund, 6	36 66		2 20	16 19
	3	43			R. R. bond sink'g f'd, 3½.	21 38		1 28	22 30
	3	52			R. R. bridge b'd sin. f'd, 2½.	13 75		83	21 74
	4	52			Bridge fund, 2	12 22		73	49 57
					Dist. school	1 20		07	
					Dog				
					Advertising			1 00	
					Total	123 40		8 41	131 81
					5 %				6 59
					Cert's				4 00
									$142 40

(Original.) WM. F. HEINS, *Treasurer.*

395 EXHIBIT 10.

No. 4118.

Consolidated tax	
State general	4 mills.
" sinking	$\frac{5}{8}$
" school	1
" university	$\frac{3}{8}$
County general	10
Co. bond sinking	6

OFFICE OF COUNTY TREASURER,
DOUGLAS COUNTY, NEB.,
OMAHA, NEB., *Dec.* 24, 1880.

Received of J. C. Noyes sixty-seven & $\frac{52}{100}$ dollars in full of the following taxes for the year 1879 on the annexed property or real estate:

Part of section or name of town.	Sec. or lot.	Town. or blk.	Range.	Acres.	Valuation.	Am't tax.	Interest.	Total.
Omaha	3	52			900	19 80		22 51
	4	"			2,000	44 00		49 39
								871 90

Sold for taxes at private sale.

Interest	3 72
Com's	3 38
Cert's	1 00

(Original.) WM. F. HEINS, *Treasurer.*

396 EXHIBIT 11.

887.04. No. 40.

CITY COLLECTOR'S OFFICE,
OMAHA, NEBRASKA, *September* 19, 1873.

Received of Thomas Bryant eighty-seven $\frac{4}{100}$ dollars *and* —— *cents* in full for city taxes assessed on the following described property in the city of Omaha for the year 1872:

	Lot.	Block.	General fund.	Sinking fund.	School fund.	Total.
Omaha	4	52	41 40	28 98	12 42	82 80
Int. & adv.			2 17	1 45	62	4 24
						887 04
5%						4 35
						891 39

Sold at public sale.
(Original.) E. C. McSHANE, *Treasurer.*

397 $1,621.73. EXHIBIT 12. No. 209.

CITY COLLECTOR'S OFFICE, OMAHA, NEBRASKA, *Sept.* 9, 1874.

Received of Thomas Bryant sixteen hundred twenty-one & $\frac{73}{100}$ dollars in full for city taxes assessed on the following described property in the city of Omaha for the year ending March, 1874:

Part of section or name of town.	Section or lot.	Town. or block.	Range or lot.	Acres or block.	General fund.	Sinking fund.	School fund.	Sidewalk tax.	Total.
Omaha	1	9			14	10 50	10 50		35 00
	2	"			10	7 50	7 50		25 00
	6	14			14	10 50	10 50		35 00
	7	"			12	9	9		30 00
	5	19			10	7 50	7 50		25 00
	3	23			16	12	12		40 00
	E. ½ of 5	41			5	3 75	3 75		12 50
	2	43			14	10 50	10 50		35 00
	3	"			15	11 25	11 25		37 50
	E. ½ of 5	"			6	4 50	4 50		15 00
	6	"			16	12 00	12 00		40 00
	4	44			21	15 75	15 75		52 50
	1	45			24	18	18		60 00
	6	47			16	12	12		40 00
	8	"			20	15	15		50 00
	1	48			13	9 75	9 75		32 50
	2	48			9	6 75	6 75		22 50
	7	51			10	7 50	7 50		25 00
	3	52			15	11 25	11 25		37 50
	4	52			35	26 25	26 25		87 50
	E. ½ of 7	54			14	10 50	10 50		35 00
	2	55			24	18	18		60 00
	2	57			16	12	12		40 00
	1	62			8	6	6		20 00
	2	"			8	6	6		20 00
	5	"			22	16 50	16 50		55 00
	3	72			9	6 75	6 75		22 50
	5	74			17	12 75	12 75		42 50
	7	"			19	14 25	14 25		47 50
	4	76			28	21	21		70 00
	5	"			28	21	21		70 00
	6	"			20	15	15		50 00
	6	77			16	12	12		40 00
	4	78			26	19 50	19 50		65 00
	7	"			15	11 25	11 25		37 50
	2	79			20	15	15		50 00
	3	"			20	15	15	27 43	77 43
					605 00	453 75	453 75	27 43	1,539 93
					30 25	22 69	22 69	2 47	78 10
					3 70				3 70
					638 95	476 44	476 44	29 90	1,621 73
5% sale									81 08
									1,702 81

Sold at public sale.

A. C. ALTHAUS,
County Treasurer.

398 EXHIBIT 13.

$275.40. No. 14.

CITY COLLECTOR'S OFFICE,
OMAHA, NEBRASKA, *June* 4, 1875.

Received of Thomas Bryant, by A. C. Althaus, two hundred and seventy-five dollars and 40 cents in full for city taxes assessed on the following described property in the city of Omaha for the year ending March, 1875:

	Lot.	Block.	General fund.	Sinking fund.	School fund.	Total.
30 60	3	51	15	7 50	7 50	30
67 32	4	"	33	16 50	16 50	66
59 16	5	76	29	14 50	14 50	58
93 84	E. ½ 1	118	46	23	23	92
24 48	8	93	12	6	6	24
Int.			2 70	1 35	1 35	5 40
						$275 40

(Original.)

CHRIS. HARTMAN,
City Treasurer.

EXHIBIT 14.

$202.70. No. 150.

CITY COLLECTOR'S OFFICE,
OMAHA NEBRASKA, *July* 14, 1876.

Received of Thomas Bryant, holder of tax title, two hundred and two $\frac{70}{100}$ dollars in full for city taxes assessed on the following described property in the city of Omaha for the year ending March, 1876:

Lot.	Block.	General fund.	Sinking fund.	School fund.	Total.	
3	52	14	9 80	9 80	33 60	34 61
7	133	16	11 20	11 20	38 40	39 55
8	133	27	18 90	18 90	64 80	66 74
S. ½ 8	136	25	17 50	17 50	60	61 80
Interest		2 46	1 72	1 72	5 90	
					$202 70	

Entered on sales book for 1873 tax.
(Original.)

CHRIS. HARTMAN,
City Treasurer.

399

EXHIBIT 15.

$74.16. No. 143.

CITY COLLECTOR'S OFFICE,
OMAHA, NEBRASKA, *July* 31, 1877.

Received of Thos. Bryant, holder of tax title, seventy-four $\frac{16}{100}$ dollars in full for city taxes assessed on the following described property in the city of Omaha for the year ending March, 1877:

Lot.	Block.	General fund.	Sinking fund.	School fund.	Total.
3	52	12	4 80	4 80	21 60
4	52	28	11 20	11 20	50 40
Interest		1 20	48	48	2 16
					$74 16

Entered on 1873 sales book.
(Original.)

CHRIS. HARTMAN,
City Treasurer,
Per KILTON.

EXHIBIT 16.

Taxes for the Year 1879 *on the Annexed Property or Real Estate.*

Part of section or name of town.	Lot.	Blk.		Am't tax.	Total.
Omaha	3	52	St. general	11 60	19 80
	4	"	St. sinking	1 81	44 00
			St. school	2 90	
			St. university	1 09	
			Co. general	29 00	
			Co. bond s'k	17 40	
				$63 80	

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

I hereby certify that this is a true and correct copy and transcript of the tax duplicate for the year 1879 of said county and State relating to lots 3 and 4, in block 52, in the city of Omaha.

JOHN RUSH,
Co. Treas'r, Douglas Co., Neb.

400 EXHIBIT 16.

Taxes Assessed on the Following Described Property in the City of Omaha for the Year 1879.

Value.	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
900	3	52	9 00	9 00	9 00	45	27 75
2,000	4	------	20 00	20 00	20 00	1 00	61 00

CITY OF OMAHA, *Douglas County, Nebraska,* } *ss:*

I hereby certify that the above is a true and correct transcript from and copy of the tax-list for 1879 of the city of Omaha relating to the above-described lots, as to the matters above stated and given.

Feb. 15, '82.

TRUEMAN BUCK,
City Treasurer.

EXHIBIT 17.

$95.53. CITY COLLECTOR'S OFFICE,
OMAHA, NEB., *Dec.* 24, 1880.

Received of J. C. Noyes ninety-five & $\frac{53}{100}$ dollars in full for city taxes assessed on the following described property in the city of Omaha for the year ending March, 1880:

	Lot.	Block.	General fund.	Sinking fund.	School fund.	Library fund.	Total.
Omaha	3	52	9 00	9 00	9 00	31 14 45	27 45
	4	52	20 00	20 00	20 00	69 17 1 00	61 00
Int.	------	------	2 32	2 32	2 32	------ 12	7 08
Commission.	------	------	------	------	------	------ ------	4 78
							100 00

Sold for taxes at private sale.
(Original.)

WM. F. HEINS,
Co. Treasurer.

401 EXHIBIT 18.

County Treasurer's Certificate of Tax Sale.

STATE OF NEBRASKA, *County of Douglas,* } *ss:*

I, Wm. F. Heins, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 4, in block 52, Omaha, was,

on the twenty-fourth day of December, A. D. 1880, duly sold by me, in the manner provided by law, at private sale, in the treasurer's office, in the court-house, for the delinquent State, Co., and city taxes for the year 1879 upon the same, amounting to one hundred eighteen & $\frac{56}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to J. C. Noyes for the sum of one hundred eighteen & $\frac{56}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said J. C. Noyes, his heirs or assigns, will be entitled to a deed therefor [on] and after the twenty-fourth day of December, 1882, on surrender of this certificate.

In witness whereof I have hereunto set my hand this twenty-fourth day of December, 1880.

WM. F. HEINS,
Treasurer of Douglas County, State of Nebraska.

[On margin:] Offered at public sale, but not sold for want of bidders.

Said exhibit is endorsed as follows: "J. C. Noyes."

402 EXHIBIT 18.

County Treasurer's Certificate of Tax Sale.

STATE OF NEBRASKA, }
County of Douglas, } ss:

I, Wm. F. Heins, treasurer of the county of Douglas, in the State of Nebraska, do hereby certify that the following described real estate in said county and State, to wit, lot 3, in block 52, Omaha, was, on the twenty-fourth day of December, A. D. 1880, duly sold by me in the manner provided by law, at private sale, in the treasurer's office, in the court-house, for the delinquent State, Co., and city taxes for the year 1879 upon the same, amounting to fifty-three & $\frac{65}{100}$ dollars, including interest and penalty thereon and the costs allowed by law, to J. C. Noyes for the sum of fifty-three & $\frac{65}{100}$ dollars, he being the highest and best bidder for the same; and I further certify that unless redemption is made of said real estate in the manner provided by law the said J. C. Noyes, his heirs or assigns, will be entitled to a deed therefor on and after the twenty-fourth day of December, 1882, on surrender of this certificate.

In witness whereof I have hereunto set my hand this twenty-fourth day of December, 1880.

WM. F. HEINS,
Treasurer of Douglas County, State of Nebraska.

[On margin:] Offered at public sale, but not sold for want of bidders.

Said exhibit is endorsed as follows: "J. C. Noyes."

Upon the back of said deposition appear endorsements in words and figures following, to wit: No. 8, G. Received March 20, 1883, and opened by order of court May 28th, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 21st day of April, 1883, a citation was filed in said case, the following of which is the original copy:

403 THE UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

To Martin Spitley, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, wherein George W. Frost and Abby B. Frost are the appellants and you, Martin Spitley, are the appellee, to show cause, if any there be, why said decree rendered against the said appellants mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 19th day of April, A. D. 1883.

[Seal United States Circuit Court, District of Nebraska.]

ELMER S. DUNDY, *Judge.*

DISTRICT OF NEBRASKA ss:

I hereby certify and return that on the 27th day of April, 1883, I received this citation, and on the 27th day of April, 1883, I served the same upon the within-named Martin Spitley, by his attorneys of record, Redick & Redick, in Douglas county, State and district of Nebraska, by delivering to and leaving with C. R. Redick, of said Redick & Redick, a certified copy thereof, with all the endorsements thereon.

LUIS L. BIERBOWER,
United States Marshal for the District of Nebraska.

Marshal's costs, $2.06.

[Endorsed:] Filed Apr. 30, 1883. Elmer D. Frank, clerk.

[Endorsed:] No. 8. G. United States circuit court, district of Nebraska. Martin Spitley *v.* George W. Frost *et al.* Citation. Filed April 21, 1883. Elmer D. Frank, clerk.

Marshal's costs:

Service	2 00
Mileage	06
Total	$2 06

404 Thereupon, afterwards, to wit, on the said 21st day of April, 1883, a bond was filed in said case; which said bond is in words and figures following, to wit:

Know all men by these presents that we, Geo. W. Frost and Abby B. Frost, as principals, and Geo. P. Bemis, as surety, all of Omaha, Nebraska, are held and *finally* bound unto Martin Spitley in the sum of twenty-five hundred dollars, to be paid to the said Martin Spitley, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals [and] dated this 18th day of April, A. D. 1883.

Whereas the above-named George W. Frost and Abby B. Frost have taken an appeal to the Supreme Court of the United States to reverse the decree rendered by the circuit court of the United States for the district of Nebraska in an action therein, heretofore pending, wherein said Martin Spitley was complainant and said George W. Frost was defendant and said George W. Frost and Abby B. Frost were complainants by cross-bill, and against said George W. Frost and Abby B. Frost:

Now, therefore, the condition of the above obligation is such that if the above-named Geo. W. Frost and Abby B. Frost shall prosecute their said appeal to effect and answer all costs and damages if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

GEO. W. FROST.
ABBY B. FROST.
GEO. P. BEMIS.

Ap'l 19.
Approved by—
ELMER S. DUNDY, *Judge.*

405 STATE OF NEBRASKA, }
Douglas County, } ss:

George P. Bemis, the surety above named, being first duly sworn, deposes and says that he is worth the sum of not less than five thousand dollars over and above all his just debts and liabilities and exclusive of property exempt by law from execution.

GEO. P. BEMIS.

Subscribed in my presence and sworn to before me this 18th day of April, A. D. 1883.

[SEAL.] RALPH E. GAYLORD,
Notary Public.

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitley *vs.* George W. Frost *et al.* Bond. Filed April 21st, 1883. Elmer D. Frank, clerk.

406 Thereupon, afterwards, to wit, on the 28th day of April, 1883, depositions were filed in said case; which said depositions are in words and figures following, to wit:

THOMAS BRYANT, Complainant,

vs.

GEORGE W. FROST *et al.*, Defendants.

Testimony taken before me, John T. Bell, examiner in equity, on the part of the complainant, under the 67th rule of practice for the courts of equity in the United States.

WEDNESDAY *April 18th*, 1883.

Present: A. C. Montgomery, Esq., counsel for complainant; John L. Webster, Esq., counsel for defendant Frost.

CHARLES M. CONNOYER, a witness produced and sworn on the part of the complainant, deposes and says as follows:

By Mr. MONTGOMERY:

Q. State your name, age, and place of residence.

A. Charles M. Connoyer; age, 42; residence, Omaha, Neb.

Q. What official position do you hold in this city at the present time?

A. Secretary of the board of education.

Q. As such secretary do you have charge of the books belonging to the school district of Omaha?

A. Yes, sir; I have got charge of all the papers and books belonging to the school district of Omaha.

Q. Have you in your possession the records of the board of trustees for district number one, of Douglas county, comprising Omaha, for the years 1869, 1870, and 1871?

A. No, sir; I have not.

Q. Do you know where those books are?

A. I expect they are lost.

Q. What makes you think they are lost?

A. Because if they were not they would be in my possession.

407 Q. Have you looked in every place where they would be liable to be found?

A. Yes, sir.

Q. And have been unable to find them?

A. Yes, sir.

Q. Have you any idea that those records are in existence?

A. No, sir.

Q. You would not know where to look for them?

A. No, sir.

Q. You have made every possible effort to find them?

A. Yes, sir.

CHARLES M. CONNOYER.

J. J. POINTS, a witness produced and sworn on behalf of the complainant, deposes and says as follows, to wit:

By Mr. MONTGOMERY:

Question. State your name, age, place of residence, and present occupation.

A. J. J. Points; age, 38; place of residence, Capital avenue, between 12th and 13th, Omaha, Nebraska; present occupation, county superintendent of public instruction.

Q. As such superintendent have you in your possession the reports made to the county superintendent of Douglas county by the school directors of school district No. 1, county of Douglas, for the years 1869, 1870, and 1871, applying to the schools in the city of Omaha?

A. I have the reports for the years ending in April, 1870, 1871, and 1872, and covering most of the year 1869.

Q. Please produce the reports. (Reports produced by witness.)

The complainant offers in evidence that portion of each of the three pages produced by Mr. Points, showing the heading of the report and so far as the same relates to the assessment of the
408 district for school taxes in each year, with the signatures of the directors, marked Exhibits A, B, and C. (Objected to by complainant as improper and incompetent.) Copies of same are attached hereto.

J. J. POINTS,

JOHN BAUMER, a witness produced and sworn in behalf of the complainant, deposes and says as follows, to wit:

By Mr. MONTGOMERY:

Question. State your name, place of residence, and occupation.

A. John Baumer; residence, Omaha; occupation, county clerk of Douglas county, Neb.

Q. Do you have charge in your official position of the reports which are made by the directors and the board of the several school districts of Douglas county, which have been levied by the school board?

A. I do.

Q. Can you produce here the reports which were made by the board of school directors for school district No. 1 to the county clerk for the years 1869, 1870, and 1871?

A. I cannot.

Q. Why not?

A. I am unable to find any.

Q. Have you made diligent search for them?

A. Yes, sir.

Q. Have you looked for them, wherever they possibly might be, in your office?

A. Yes, sir.

Q. And have been unable to find them?

A. Yes, sir.

JOHN BAUMER.

409 Complainant offers in evidence transcripts of the records of the board of county commissioners of Douglas county, Nebraska, levying county and State taxes in said county for the years 1867 to 1869, inclusive.

Objected to by the defendant. Objection reduced to writing and attached to exhibit. Transcript marked Exhibit D.

Plaintiff offers in evidence transcripts of the Douglas county assessment-roll for the years 1867 to 1869, inclusive, so far as same relates to lots 3 and 4, block 52, Omaha, Nebraska.

Objected to by defendant. Objection reduced to writing [and] attached to transcript, marked Exhibit E.

Plaintiff offers in evidence transcripts of the ordinances of the city of Omaha, Douglas county, Nebraska, levying city taxes for the years 1871 to 1879, both inclusive, all of which plaintiff asks to have enclosed and returned with this deposition and filed, to be used as evidence on the part of the plaintiff in the cross-bill in this suit.

Objected to by defendant. Objection reduced to writing and attached to the transcript offered, marked Exhibit F.

B. E. B. KENNEDY, produced and sworn as a witness on the part of the complainant and examined in chief by Mr. MONTGOMERY, testified as follows:

Q. State your name, age, place of residence, and occupation.

A. B. E. B. Kennedy; age, 56 years to-day; residence, Omaha, Nebraska; occupation, lawyer.

Q. What official position connected with the schools of Omaha did you hold in 1869, 1870, and 1871?

A. School director.

Q. As such director, did you have charge of the books, papers, and records of the district?

A. I did.

Q. Will you state what you did with those records, papers, and books when you went out of office?

410 A. Such as pertained to my office I turned over to [the] committee of the board of regents.

Q. What was the board of regents?

A. They were the officers and members of the first school board which was established in the city independent of the public or district school.

Q. You say the books connected with your office; what other books were there in the district?

A. The treasurer's book kept by Mr. Evans, as treasurer; the records were kept otherwise.

Q. In which set of books was kept the record of the levy of taxes for this school district's purposes?

A. The record book kept by the director.

Q. That was by yourself?

A. Yes, sir.

Q. Will you state, as a matter of fact within your recollection

whether or not taxes were levied in and for those years by the school board then in existence, and whether such levies were recorded in said books?

Objected to by plaintiff as not the best evidence and incompetent.

A. Taxes were levied for those years, I think.

Q. For all three of those years?

A. I know they were levied for two of those years, and probably for the third year. I don't remember distinctly as to the third year.

Q. You made reports to the county superintendent of schools in those years, did you not?

A. Yes, sir; annual reports.

Q. If in those reports you reported a tax as levied in all three years, what is the fact?

411 Defendant objects as last above.

A. It was the duty of the school director to report annually the taxes levied, and I did report, and those reports will show.

Q. And if those reports show that taxes were levied, then you would swear that taxes were levied?

Defendant objects as incompetent and improper.

A. Undoubtedly.

B. E. B. KENNEDY.

I, John T. Bell, examiner duly appointed by the circuit court of the United States for the district of Nebraska, do hereby certify that on the day named in the depositions hereto annexed I was attended at the office of Groff & Montgomery by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and the depositions were reduced to writing and read to the witnesses and by them subscribed in my presence, and that Exhibits A, B, C, D, E, and F were introduced in evidence in said cause during the taking of said depositions.

Dated April 20th, 1883.

JOHN T. BELL, *Examiner.*

Examiner's fees, $4.15. Paid by complainant.

412 EXHIBIT "A."

Annual Report of School District No. one, County of Douglas, to the County Superintendent of Public Instruction for the Year 1869–'70.

District taxes assessed within the year ending on the first Monday in April, 18—.

Purposes for which levied.	Am't levied.
Building school-houses and sites, and to meet incidental expenses	$50,000 00

Director for the ensuing year, B. E. B. Kennedy.
Post office, Omaha city, Neb'a.

I hereby certify that the above is a correct report from the aforesaid district No. one, county of Douglas, for the school year next preceding the 1st Monday of April, 1870.

Dated April 4th, 1870.

(Signed) B. E. B. KENNEDY, *Director.*

EXHIBIT "B."

Annual Report of School District No. one, County of Douglas, to the County Superintendent of Public Instruction for the Year 1870–'71.

District taxes assessed within the year ending on the first Monday in April, 1871.

Purposes for which levied.	Am't levied.
For fuel, &c.	700 00
Janitor's services	560 00
Salary of director	800 00
" " treasurer	400 00
" " moderator	200 00
For taking enumeration of youths	100 00
" repairs and incidentals	450 00
" school-house sites	6,000 00
" school-houses	40,000 00

413 Director for the ensuing year, B. E. B. Kennedy.
Post office, Omaha.
Treasurer for ensuing year, John Evans.
Moderator " " " A. J. Simpson.

I hereby certify that the above is a correct report from the aforesaid district No. one, county of Douglas.

Dated April 12th, 1871.

(Signed) B. E. B. KENNEDY, *Director.*

EXHIBIT C.

Annual Report of School District No. one, County of Douglas, to the County Superintendent of Public Instruction for the Year 1871–'72.

District taxes assessed within the year ending on the first Monday in April, 1872.

Purpose for which levied.	Mills on a dollar.	Amount expected to be realized.
Teachers' wages		$9,500 00
Incidental expenses		6,500 00

Director for ensuing year, —— ——.
Post office, ——.

I hereby certify that the above report is a correct report from the aforesaid district No. one, county of Douglas, for the school year next preceding the first Monday of April, 1872.

(Signed) B. E. B. KENNEDY, *Director.*

Defendant Frost objects to the introduction in evidence of the transcript showing the levy of taxes by the board of county commissioners for the years 1867 to 1869, both inclusive, for the following reasons:

1st. Because the levy for each of said years is in excess of the amount authorized by law.

2nd. Because the levy for each of said years contains a levy of taxes which are unauthorized by law.

3rd. Because said taxes for said years were not levied at the time and in the manner provided by law.

4th. That the levy of taxes for the years 1867 *and* 1876, inclusive, cannot be made a basis of a lien on the lands in controversy by reason of the statute of limitations.

414 5th. That this action not being brought within five years after the date of the sale of the lands for taxes, there is no jurisdiction to maintain an action to foreclose a lien for any of said taxes for any of the years shown in said transcript.

6th. That said transcript is incompetent and improper evidence.

WEBSTER & GAYLORD,
Atty's for Def't Frost.

EXHIBIT "D."

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, John Baumer, county clerk, duly elected and qualified, in and for said county, do hereby certify that the foregoing and hereto attached instruments are true and correct copies and transcripts of the records of the board of county commissioners in and for said county, in so far as the same relate to and show the levies by the said board of taxes for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, and 1879 in and for said county and State.

In testimony whereof I have hereunto set my hand and seal this 6th day of April, A. D. 1883.

[SEAL.] JOHN BAUMER,
County Clerk.

County clerk's fees for transcript, $5.50. Paid by Thos. Bryant, per G. and M.

JOHN BAUMER,
County Clerk.

415 *Levy of* 1867.

JULY 1ST, 1867.

The following resolution was adopted by the board of commissioners:

Resolved, That the taxes for 1867 within and for Douglas county, Nebraska, be, and the same are hereby, levied in the following rates, to wit:

State Taxes.

State general fund tax, two & one-half (2½) mills on the dollar valuation.

Sinking fund tax, one and one-half (1½) mills on the dollar valuation.

State school fund tax, two (2) mills on the dollar valuation.

County Taxes.

County general fund tax, three (3) mills on the dollar valuation.
" sinking fund bond, two (2) mills on the dollar valuation.
" sinking fund (regular), one-half (½) mill on the dollar valuation.
County court-house, one-half (½) mill on the dollar valuation.
" poor-house, two (2) mills on the dollar valuation.
Land road tax, three dollars for each quarter section.

After transaction various business, on motion, board adjourned to meet July 6th, 1867.

FRANK MURPHY,
County Clerk.

Levy of 1868.

JULY 6TH, 1868.

The following resolution was adopted by the board of commissioners:

Resolved, That the taxes for the year 1868 within and for Douglas county, Nebraska, be, and they are hereby, levied in the following rates, to wit:

416 *State Taxes.*

Total valuation of the county	8,066,779	
State general fund, 1½ mills on the dollar		12,100 16
" sinking fund, ¾ " " "		6,050 08
" school " 1 " " "		8,066 77
Total amount of State taxes levied		26,217 01

County Taxes

County general fund 3¼ mills on the dollar		26,217 03
" sinking " ⅛ " " "		1,008 34
" poor " 1¼ " " "		10,083 45
" road and bridge, 1 " " "		8,066 77
" court-house, ⅛ " " "		1,008 34
Land road tax, $3 for each quarter of land		
Total amount of county taxes levied		46,383 93

After transacting various business, on motion, board adjourned to meet Tuesday, July 7th, A. D. 1868, at 2 o'clock p. m.

C. A. DOWNEY,
County Clerk.

Levy of 1869.

JULY 5TH, 1869.

The following resolution was adopted by the board of commissioners:

Resolved, That the taxes for the current year within and for the county of Douglas, Nebraska, be, and they are hereby, levied as follows, to wit:

Total valuation in county		9,339.488
County general fund four (4) mills		
	County poor-house one (1) mill	9,339.488
417	County road and bridge, one (1) mill	9,339.488
	" sinking fund bond, two (2) mills	
Land county road tax, $3 for each section of land		

On motion, the board adjourned to meet on Thursday, July 8th, 1869, to await the return of the levy of the State board of equalization, which was returned for correction.

C. A. DOWNEY,
County Clerk.

THURSDAY, *July 8th*, 1869.

Board met pursuant to adjournment. There not being a quorum present, the board adjourned to meet Saturday, July 10th, 1869.

C. A. DOWNEY,
County Clerk,

SATURDAY, *July 10th*, 1869.

Board met pursuant to adjournment.

Present: Messrs. Chapman, Geise, and Eicke.

After transacting various business, on motion, board adjourned to meet Wednesday, July 14th, 1869.

WEDNESDAY, *July 14th*, 1869.

Board met pursuant to adjournment.

Present: Messrs. Chapman and Gise.

Minutes of last meeting read and approved.

The following resolution was adopted:

Resolved, That the State tax as levied by the State board of equalization, which was returned for correction in date, be, and is hereby, levied as follows, to wit:

State general, 1½ mills on the dollar.
" sinking, ¾ " " " "
" school, 1 " " " "
" university, 1 " " " "

On motion, board adjourned to meet on Saturday, July 17th, 1869.

C. A. DOWNEY,
County Clerk.

418 *Levy of* 1870.

JULY 13TH, 1870.

The following resolution was adopted by the board of commissioners:

The following levy of taxes was made for the year 1870.

State Levy.

General fund, 2 mills on the dollar.
Sinking fund, ½ mill on the dollar.
School fund, 2 mills on the dollar.
University fund, 1 mill on the dollar.

County Levy.

County general fund, three (3) mills on the dollar.

County special sinking fund, to pay interest on warrants issued, 1 (one) mill on the dollar.

County sinking fund bond, to pay interest on bonds issued in place of old Douglas county warrants dated prior to Jan. 1st, 1867, in accordance with special act of Legislature, (1) one mill on the dollar.

County sinking fund bond, to pay interest on bonds issued to the O. & S. W. and Omaha & N. Western R. R. Co.'s, (4) four mills on the dollar.

Road and bridge fund, to erect and repair bridges and improve roads, (1) one mill on the dollar.

Land road fund, $3.00 per quarter section of land.

Poor fund, one (1) mill on the dollar.

On motion, the board adjourned to meet Saturday, July 16th, 1870, at 2 o'clock p. m.

THOMAS SWOBE,
County Clerk.

419 *Levy of* 1871.

JULY 3, 1871.

The following resolution was adopted by the board of commissioners:

Resolved by the board of county commissioners of Douglas county, Nebraska, That the following taxes be, and the same are hereby, levied on the assessed value of said county for the year 1871, to wit:

For State revenue, as directed by the State board of equalization for the year 1871.

Assessed value of county, $10,470,161.00.

State general fund, two & one-half (2½) mills on the dollar valuation.

State sinking fund, one (1) mill on the dollar valuation.

" school fund, two (2) mills on the dollar valuation.

" normal school fund, one-half (½) mill on the dollar valuation.

County Levy.

General fund, three (3) mills on the dollar valuation.
Poor fund, one (1) mill on the dollar valuation.
Sinking fund R. R. bond, six (6) mills on the dollar valuation, to pay interest [on] Omaha & Southwestern & Omaha & N. W. R. R. bonds.
Sinking fund R. R. bridge, three (3) mills on the dollar valuation, to pay interest on Mo. river bridge bonds.
Fund bond, one-half (½) mill on the dollar valuation, to redeem Douglas Co. (general fund warrant) bonds.
Fund, special, one-half (½) mill on the dollar valuation, to pay interest on outstanding general fund warrants.
Road & bridge fund, one (1) mill on the dollar valuation.
Road fund, $4 on each quarter section of land.

On motion, the board adjourned to meet Saturday, July 8th, '71, at 2 o'clock, p. m.

THOS. SWOBE,
County Clerk.

420 *Levy of* 1872.

JULY 1ST, 1872.

The following resolution was adopted by the board of commissioners:

Resolved by the board of county commissioners of Douglas county, Nebraska, That the following taxes be, and the same are hereby, levied on the assessed value of the property of said county for the year 1872, to wit:

For State revenue, as directed by the State board of equalization, for the year 1872.

Assessed value of county, $9,174,247.08.
State general fund, two & one-half (2½) mills on the dollar valuation.
" sinking fund, one (1) mill on the dollar valuation.
" school fund, 2 mills on the dollar valuation.
" university fund, one-quarter (¼) mill on the dollar valuation.

County Levy.

General fund, four (4) mills on the dollar valuation.
Poor fund, one-quarter (¼) mill on the dollar valuation.
Road and bridge fund, one (1) mill on the dollar valuation.
Road fund, $4.00 on each quarter section of land.
Sinking fund railroad bonds, six mills on the dollar valuation, to pay interest on Omaha & Southwestern and Omaha and Northwestern railroad bonds.
Sinking fund railroad bridge, three (3) mills on the dollar valuation, to pay interest on Missouri river bridge bonds.
Sinking fund, special, one-half (½) mill on the dollar valuation, to pay interest on outstanding general fund warrants.

After transacting various business, on motion, board adjourned to meet to-morrow, July 2nd, 1872, at 10 o'clock, a. m.

WM. H. IJAMS,
County Clerk.

421 *Levy of* 1873.

JULY 7TH, 1873.

The following resolution was adopted by the board of commissioners:

Resolved by the board of county commissioners of Douglas county, Nebraska, That the following taxes be, and the same are hereby, levied on the assessed value of the property of said county for the year 1873:

For State revenue, as directed by the State board of equalization, for the year 1873.

Assessed value of property in the county, $9,059,909.

State general fund, two and one-half (2½) mills on dollar valuation.

State sinking fund, one (1) mill on the dollar valuation.

State school fund, two (2) mills on the dollar valuation.

State university fund, one-quarter (¼) of one mill on the dollar valuation.

State penitentiary fund, one-half (½) mill on the dollar valuation.

County Levy.

General fund, four (4) mills on the dollar valuation.

Poor fund, three-quarters (¾) of one mill on the dollar valuation.

Road and bridge fund, one-half mill on the dollar valuation.

Road fund, $4.00 on each quarter section of land.

Sinking fund railroad bonds, six (6) mills on the dollar valuation, to pay interest on the Omaha and Southwestern and the Omaha and Northwestern railroad bonds.

Sinking fund railroad bridge bonds, three (3) mills on the dollar valuation, to pay interest on Missouri river bridge bonds.

Sinking fund, special, one-half (½) mill on the dollar valuation, to pay interest on outstanding general fund warrants.

After transacting various business, on motion, board adjourned to meet Saturday, July 12th, 1873, at 10 o'clock a. m.

WM. H. IJAMS,
County Clerk.

422 *Levy of* 1874.

JULY 6TH 1874.

The following resolution was adopted by the board of commissioners:

Resolved, That the following taxes be, and the same hereby are, levied on all the taxable property in Douglas county, Nebraska, as assessed for the year 1874:

For State purposes, as directed by the State board of equalization.

General fund, two and one-half (2½) mills on the dollar valuation.
Sinking " one mill on the dollar valuation.
School " two (2) mills on the dollar valuation.
University " one-fourth (¼) of one mill on the dollar valuation.
Penitentiary fund, one-half (½) of a mill on the dollar valuation.

For County Purposes.

General fund, five (5) mills on the dollar valuation.
Sinking " one-half (½) of a mill on the dollar valuation.
R. R. bond sinking fund, four and one-half (4½) mills on the dollar valuation.
R. R. bridge bond sinking fund, two and one- half (2½) mills on the dollar valuation.
Road & bridge fund, one (1) mill on the dollar valuation.
Poor fund, one-fourth (¼) of a mill on the dollar valuation.
Asylum fund, one-eighth (⅛) of a mill on the dollar valuation.
Road fund, four dollars ($4.00) on each quarter section of land.

After transacting various business, on motion, board adjourned to Tuesday, July 7th, 1874.

LEWIS S. REED, [SEAL.]
County Clerk.

423 *Levy of* 1875.

JULY 5TH, 1875.

The following resolution was adopted by the board of commissioners:

Resolved, That the following taxes [be], and the same are hereby, levied on all taxable property in Douglas county, Nebraska, as assessed for the year 1875:

For State purposes, as directed by the State board of equalization, viz:

General fund, four (4) mills on the dollar valuation.
Sinking fund, one (1) mill on the dollar valuation.
School fund, one (1) mill on the dollar valuation.
University, one-fourth (¼) of a mill on the dollar valuation.
Penitentiary fund, one (1) mill on the dollar valuation.
State bond fund, one tenth ($\frac{1}{10}$) of a mill on the dollar valuation.

For County Purposes.

General fund, five and one-half (5½) mills on the dollar valuation.
Sinking fund, one- half (½) of a mill on the dollar valuation.
R. R. bond sinking fund, four (4) mills on the dollar valuation.
R. R. bridge bond sinking fund, two (2) mills on the dollar valuation.
Road & bridge fund, two (2) mills on the dollar valuation.
Poor fund, one-half (½) mill on the dollar valuation.
Insane asylum fund, one-eighth (⅛) of a mill on the dollar valuation.

Road fund, four dollars ($4.00) on each quarter section of land.

After transacting various business, on motion, board adjourned to Tuesday, 6th inst.

LEWIS S. REED,
County Clerk.

424 *Levy of* 1876.

JULY 3RD, 1876.

The following resolution was adopted by the board of commissioners:

Resolved, That the following taxes be, and the same are hereby, levied on all the taxable property in Douglas county, Nebraska, as assessed for the year 1876:

For State purposes as directed by the State board of equalization, viz:

General fund, four (4) mills on the dollar valuation.
Sinking fund, three-fourths ($\frac{3}{4}$) of a mill on the dollar valuation.
School fund, one (1) mill on the dollar valuation.
University fund, one-fourth ($\frac{1}{4}$) of a mill on the dollar valuation.
Penitentiary fund, one (1) mill on the dollar valuation.
State bond fund, one-tenth ($\frac{1}{10}$) of a mill on the dollar valuation.

For County Purposes.

General fund, five (5) mills on the dollar valuation.
R. R. bond sinking fund, four (4) mills on the dollar valuation.
R. R. bridge bond sinking fund, two (2) mills on the dollar valuation.
Bridge fund, one & sixty-five hundredths ($1\frac{65}{100}$) mills on the dollar valuation.
Asylum fund, one-fourth ($\frac{1}{4}$) of a mill on the dollar valuation.
Road fund, four dollars ($4.00) on each quarter section of land.

After transacting various business, on motion, board adjourned to Tuesday, 4th inst.

LEWIS S. REED,
County Clerk.

425 *Levy of* 1877.

JULY 2ND, 1877.

The following resolution was adopted by the board of commissioners:

Resolved, That the following taxes be, and the same are hereby, levied on all the taxable property in Douglas county, Nebraska, as assessed for the year 1877:

For State purposes, as directed by the State board of equalization, viz:

General fund, four (4) mills on the dollar valuation.
Sinking fund, seven-eighths ($\frac{7}{8}$) of a mill on the dollar valuation.
School fund, one (1) mill on the dollar valuation.
University fund, three-eighths ($\frac{3}{8}$) of a mill on the dollar valuation.

For County Purposes.

General fund, six (6) mills on the dollar valuation.

R. R. bond sinking fund, three and one-half (3½) mills on the dollar valuation.

R. R. bridge bond fund, two & ¼ (2¼) mills on the dollar valuation.

Bridge fund, two (2) mills on the dollar valuation.

After transacting various business, on motion, board adjourned to meet Tuesday, 3rd inst.

LEWIS S. REED,
County Clerk.

Levy of 1878.

JULY 1ST, 1878.

The following resolution was adopted by the board of commissioners:

That the following taxes be, and the same are hereby, levied on all the taxable property in Douglas county, Nebraska, as assessed for the year 1878:

For State purposes, as directed by the State board of equali-
426 zation, viz:

General fund, four (4) mills on the dollar valuation.

Sinking fund, seven-eighths (⅞) of a mill on the dollar valuation.

School fund, one (1) mill on the dollar valuation.

University fund, three-eighths (⅜) mill on the dollar valuation.

For County Purposes.

General fund, ten (10) mills on the dollar valuation.

County sinking fund, five and one-fourth (5¼) mills on the dollar valuation.

After transacting various business, on motion, board adjourned to July 2nd, 1878.

JOHN R. MANCHESTER,
County Clerk.

Levy of 1879.

JULY 7TH, 1879.

The following resolution was adopted by the board of commissioners:

Resolved, That the following taxes be, and the same are hereby, levied on all the taxable property of Douglas county, Nebraska, as assessed for the year 1879:

For State purposes, as directed by the State board of equalization, viz:

General fund, four (4) mills on the dollar valuation.

Sinking fund, five-eighths (⅝) mill on the dollar valuation.

School fund, one (1) mill on the dollar valuation.

University fund, three-eighths (⅜) mill on the dollar valuation.

For County Purposes.

General fund, ten (10) mills on the dollar valuation.
Bond sinking fund, six (6) mills on the dollar valuation.

After transacting various business, on motion, board adjourned to the 8th inst.

JOHN R. MANCHESTER,
County Clerk.

427 Defendant Frost objects to the introduction in evidence of transcript of Douglas county assessment-rolls for years 1867 to 1879, both inclusive, for the following reasons:

1st. That as to the year 1867 there is no oath of the assessor, and the lots appear to be assessed as one piece of land.

2nd. That as to the year 1868 the lots are assessed as one piece of land.

3rd. That the liens for all taxes for the years 1867 to 1877, both inclusive, are barred by the statute of limitations.

4th. That there are no proper marks denoting the amount in dollars and cents for the assessment of any of the years in said transcript.

5th. That said assessments are informal and invalid.

6th. That there is nothing to show the date of the return or the filing of said assessment-rolls or oaths for any of said years.

7th. That said transcripts are incompetent and improper evidence.

WEBSTER & GAYLORD,
Att'ys for Def't Frost.

STATE OF NEBRASKA, } ss:
County of Douglas, }

I, John Baumer, county clerk, duly elected and qualified, in and for said county, do hereby certify that the foregoing and hereto attached instruments are true and correct transcripts and copies of the assessment-rolls in and for said county for the years 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, and 1879 in so far as the same relate to and affect lots three and four, in block fifty-two, in the city of Omaha, in said county.

In witness whereof I have hereunto set my hand and seal the 6th day of April, A. D. 1883.

[SEAL.] JOHN BAUMER,
County Clerk.

County clerk's fee for transcript, $4.50. Paid by Thos. Bryant, p'r G. & M. John Baumer, county clerk.

428 *Assessment for the Year* 1867—*Omaha.*

Lot.	B.		Val.
1	52	----------	650
2		----------	600
3		----------	6,000
4		----------	

Assessment for the Year 1868—*Omaha City.*

Lot.	B.		Val.
1	52		800
2	1		700
3	1		6,000
4	1		

Assessment for the Year 1869—*Omaha Precinct No.* 3, *Douglas County.*

L.	B.	Omaha Pre. No. 3.	Val.
1	52	F. C. Clarkson	1,500
2	"	Mary B. Clarkson	1,200
3	"	U. P. R. R., D. C. Durant	1,200
4	"	Do. G. W. Frost	7,000

I, Wm. H. Lawton, precinct assessor in and for Omaha precinct No. three (3), Douglas county, Nebraska, do solemnly swear that the value of all properties, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above return; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I
429 connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

W. H. LAWTON.

Subscribed in my presence and sworn to before me this 17th day of April, 1869.

[Seal of Douglas County.]

C. A. DOWNEY,
Co. Clerk,
By W. C. KELLOGG, *D'y.*

Return of Lots in the City of Omaha, in Omaha Precinct No. 6, *Douglas County, Nebraska, as Assessed for the Year* 1870.

Names of owners.	Lot.	Blk.	Value.	Remarks.
Theodore C. Clarkson	1	52	2,200	
Mary B. Clarkson	2		1,800	
Thos. C. Durant, trustee	3		1,800	
Do.	4		5,500	

I, W. H. Lawton, precinct assessor in and for Omaha precinct No. 6, *precinct*, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

W. H. LAWTON.

Sworn to and subscribed before me this eleventh day of April, A. D. 1870.

THOS. SWOBE,
County Clerk.

430 *Return of Lots in the City of Omaha, in Omaha Precinct No. 6, Douglas County, Nebraska, as Assessed for the Year* 1871.

Owner.	P't of lot.	Lot.	Blk.	Value.	Remarks.
		1	52	1,750	
		2	-----	1,600	
		3	------	1,600	
		4	------	4,500	

I, John Gray, precinct assessor in and for Omaha No. 6 precinct, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

JOHN GRAY.

Sworn to and subscribed before me this tenth day of April, A. D. 1871

[SEAL.] THOMAS SWOBE,
County Clerk.

Return of Lots in the City of Omaha, Omaha Precinct No. 6, Douglas County, Neb., as Assessed for the Year 1872.

Owner.	P't of lot.	Lot.	Bl'k.	Value.	Remarks.
Jos. Boyd		1	52	1,600	
"		2		1,400	
T. C. Durant		3		1,280	
Do.		4		3,600	

431 I, Henry Munger, precinct assessor in and for sixth Omaha precinct, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

HENRY MUNGER.

Sworn to and subscribed before me this eighth day of April, A. D. 1872.

{Seal of the Court of Commissioners of Douglas County, Nebraska.}

WM. H. IJAMS,
County Clerk.

Return of Lots in the City of Omaha, Omaha Precinct No. 6, Douglas County, Neb., as Assessed for the Year 1873.

Owners.	P't of lot.	Lot.	Bl'k.	Value.	Remarks.
		1	52	1,800	
		2	------	1,400	
		3	------	1,500	
		4	------	3,500	

I, Henry Munger, precinct assessor in and for 6th Omaha precinct, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that
432 in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

H. MUNGER.

Sworn to and subscribed before me this 14th day of April, A. D. 1873.

{ Seal of the Court of Commissioners of Douglas County, Nebraska }

WM. H. IJAMS,
County Clerk.

Return of Lots in Omaha City, Omaha Precinct No. 6, Douglas County, Nebraska, for the Year 1874.

Owner's name.	Part of lot.	Lot.	Block.	Value.	Remarks.
		1	52	1,800	
		2	------	1,400	
		3	------	1,500	
		4	------	3,300	

I, Edmund Dutton, precinct assessor in and for Omaha precinct No. 6, Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of
433 whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

EDMUND DUTTON.

Sworn to and subscribed before me this thirteenth day of April, A. D. 1874.

{ Seal of the Court of Commissioners of Douglas County, Nebraska. }

LEWIS S. REED,
County Clerk.

Return of Lots in the City of Omaha, in Omaha Precinct No. 6, Douglas County, Nebraska, for the Year 1875.

Owner's name.	Part of lot.	Lot.	Block.	Dollars.	Remarks.
Catherine Boyd		1	52	1,800	
Do.		2		1,400	
Thos. C. Durrnt		3		1,400	
Do.		4		3,300	

I, John Shill, precinct assessor in and for Omaha precinct No. 6, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I con-

nived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

JOHN SHILL.

Sworn to and subscribed before me this twelfth day of April, A. D. 1875.

{ Seal of the Court of Commissioners of Douglas County, Nebraska. }

LEWIS S. REED,
County Clerk.

434 *Return of Lots in the City of Omaha, in Omaha Precinct No. 6, Douglas County, Nebraska, for the Year* 1876.

Owner's name.	Part of lot.	Lot.	Block.	Value.	Remarks.
Catherine Boyd		1	52	1,600	
Do.		2		1,200	
T. C. Durant		3		1,200	
Do.		4		2,800	

I, John Shill, precinct assessor in and for Omaha precinct No. 6, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

JOHN SHILL.

Sworn to and subscribed before me this eleventh day of April, A. D. 1876.

{ Seal of the Court of Commissioners of Douglas County. }

LEWIS S. REED,
County Clerk.

Return of Lots in the City of Omaha, in Omaha Precinct No. 6, Douglas County, Nebraska, for the Year 1877.

Owner's name.	Part of lot.	Lot.	Block.	Value.	Remarks.
Catherine Boyd		1	52	1,250.	
Do.		2		950	
T. C. Durant		3		950	
Do.		4		2,200	

435 I, Andrew H. Swendly, precinct assessor in and for Omaha precinct No. 6, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

A. H. SWENDLY.

Sworn to and subscribed before me this ninth day of April, A. D. 1877.

{Seal of the Court of Commissioners of Douglas County, Nebraska.}

LEWIS S. REED,
County Clerk.

Return of Lots in the City of Omaha, in Omaha Precinct No. 6, Douglas County, Nebraska, for the Year 1878.

Owner's name.	Part of lot.	Lot.	Block.	Value.	Remarks.
				Dollars.	
Catharine Boyd		1	52	1,150	
Do.		2		900	
T. C. Durant		3		950	
Do.		4		2,200	

436 I, Andrew H. Swendly, precinct assessor in and for Omaha precinct No. 6, in Douglas county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

A. H. SWENDLY.

Sworn to and subscribed before me this eighth day of April, A. D. 1878.

{ Seal of the Court of Commissioners of Douglas County, Nebraska. }

JOHN R. MANCHESTER,
County Clerk.

Return of Lots in the City of Omaha, in Omaha Precinct No. 6, Douglas County, Nebraska, for the Year 1879.

Owner's name.	Part of lot.	Lot.	Block.	Value.	Remarks.
				Dollars.	
Catherine Boyd		1	52	1,150	
Do.		2		900	
U. P. R. R. Co.		3		900	
Do.		4		2,000	

I, C. J. Westerdahl, precinct assessor in and for Omaha precinct No. 6, Douglas county, Nebraska, do solemnly swear that the value of all the property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain
437 the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the

amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

C. J. WESTERDAHL.

Sworn to and subscribed before me this 14th day of April, A. D. 1879.

{ Seal of the Court of Commissioners of Douglas County, Nebraska. }

JOHN R. MANCHESTER,
County Clerk.

Defendant Frost objects to the introduction in evidence of the transcript showing the levy of taxes by the city council of the city of Omaha for the years 1871 to 1879, both inclusive, for the following reasons: 1st. Because the levy for each of said years is in excess of the amount authorized by law. 2nd. Because the levy for each of said years contains a levy of taxes which are unauthorized by law. 3rd. Because said taxes for said years were not levied at the time and in the manner provided by law. 4th. That said levy of taxes for the years 1871 to 1876, inclusive, cannot be made a basis of a lien on the lands in controversy by reason of the statute of limitations. 5th. That this action not being brought within five years after the date of the sale of the lands for taxes, there is no jurisdiction to maintain an action to foreclose a lien for any of said taxes for the years shown in said transcript. 6th. That said transcript is incompetent and improper evidence.

WEBSTER & GAYLORD,
Att'ys for Def't Frost.

438 *Special Ordinance No.* 8.

Special ordinance for the levy of annual city taxes.

Be it ordained by the city council of the city of Omaha, That a tax of ten mills on the dollar valuation be, and the same is hereby, levied on all the real estate and personal property within the limits of the city of Omaha, taxable according to the laws of the State for the general purposes of said city for the fiscal year ending July first, A. D. 1872, and that a tax of six mills on the dollar valuation be, and the same is hereby, levied on all the real estate and personal property within the limits of said city taxable according to the laws of the State, for the purpose of paying the interest on the bonded indebtedness of the city, which shall become due during said fiscal year, to create a sinking fund to pay the indebtedness of said city bonded under an ordinance entitled "An ordinance to bond the floating debt of the city of Omaha," and also to pay all judgments which may be rendered against said city during the fiscal year ending July 1st, A. D. 1871.

E. A. ALLEN,
Pres't of the Council.

Passed August 15th, 1871.
Attest: C. L. BRISTOL,
City Clerk.

Approved Aug. 18th, 1871.
S. S. CALDWELL, *Mayor.*

STATE OF NEBRASKA, *Douglas Co.:*

OMAHA, *March 13th*, 1883.

I hereby certify the within to be a true and correct copy of special ordinance No. 8, as appears in book of special ordinances, page 24, in the city clerk's office of the city of Omaha, Douglas Co., Neb.
J. J. L. C. JEWETT,
City Clerk.

439 *Special Ordinance No. 25.*

For the levy of the annual city taxes.

Be it ordained by the city council of the city of Omaha, That a tax of ten mills on the dollar valuation be, and the same is hereby, levied on all the real estate and personal property within the limits of the city of Omaha taxable according to the laws of the State of Nebraska, for the general purposes of said city, for the fiscal year ending July first, A. D. 1873; also that a tax of seven mills on the dollar valuation be, and the same is herby, levied on all the real estate and personal property within the limits of said city of Omaha, taxable according to the laws of the State of Nebraska, for the following purposes, to wit, for the purposes of paying the interest on the bonded indebtedness of said city which shall become due during the fiscal year aforesaid; also to create a sinking fund to pay the indebtedness of said city funded under an ordinance entitled "An ordinance to bond the floating debt of the city of Omaha," and also to pay all judgments rendered against said city prior to July 1st, 1872, and still remaining unpaid; also that a tax of three mills on the dollar valuation be, and the same is hereby, levied on all the real estate and personal property within the said city taxable according to the laws of the State of Nebraska, for school purposes, in accordance with the provisions of an act entitled "An act relative to the schools in the city of Omaha."

(Signed) JOHN M. HUSTON,
Acting Pres't Council.

Passed July 9th, 1872.
Attest: J. M. McCUNE,
City Clerk.

I, J. M. McCune, city clerk of the city of Omaha, do hereby certify that the foregoing ordinance was duly presented to the mayor for his approval, and that he having neglected to sign said ordinance or to return the same with his objections in writing at the next meeting of the council, the said ordinance did thereby take effect without his signature, according to law.

July 17th 1872.
Attest: [SEAL.] J. M. McCUNE,
City Clerk.

440 STATE OF NEBRASKA, } ss:
Douglas County, }

OMAHA, *March 13th*, 1883.

I hereby certify that the above is a true and correct copy of special ordinance number 23, as appears in book of special ordinances, page 69, in the city clerk's office of the city of Omaha.

[SEAL.] J. J. L. C. JEWETT,
City Clerk.

Ordinance No. 274.

An ordinance for the levying of taxes for the year 1873.

SECTION 1. Be it ordained by the council of the city of Omaha, Nebraska, That the following taxes be, and the same are hereby, levied on the assessed value of the property within said city for the year 1873:

For the general fund of said city, a tax of ten mills on each dollar; for the sinking fund of said city, a tax of seven and one-half mills on each dollar; for the school fund of district 1 of said city, a tax of seven and one-half mills on each dollar of the assessed value of the property within said district.

SECTION 2. This ordinance shall take effect immediately.

(Signed) J. S. GIBSON,
Pres. of Council.

Passed July 8th, 1873.

Attest: JOS. M. McCUNE,
City Clerk.

Approved July 8th, 1873.

W. M. BREWER, *Mayor.*

STATE OF NEBRASKA, } ss:
Douglas County, }

OMAHA, *March 13th*, 1883.

I hereby certify that the within is a true and correct copy of an ordinance number 274, as appears in book of ordinances "B," page 297, in the city clerk's office of the city of Omaha.

[SEAL.] J. J. L. C. JEWETT,
City Clerk.

441 *Ordinance No.* 309.

An ordinance levying taxes for the year 1874.

Be it ordained by the city council of the city of Omaha:

SECTION 1. That the following taxes be, and the same are hereby, levied on the assessed value of the property within said city for the year A. D. 1874:

For the general fund of said city, to be used for general purposes, a tax of ten mills on each dollar; for the sinking fund of said city, a tax of five mills on each dollar.

SECTION 2. That the following taxes be, and the same are hereby, levied on the assessed value of all the property within "the school district of the city of Omaha, in the county of Douglas, in the State

of Nebraska," for the year A. D. 1874: For the school fund of said district, a tax of five mills on each dollar.

SECTION 3. This ordinance shall take effect and be in force from and after its passage.

(S'g'd) J. S. GIBSON,
President of Council.

Passed July 7th, 1874.
Attest: O. C. LUDLOW,
City Clerk.

Approved July 8th, 1874.
(Signed) C. S. CHASE, *Mayor.*

STATE OF NEBRASKA, } ss:
Douglas County, }

OMAHA, *March 13th*, 1883.

I hereby certify that the within is a true and correct copy of ordinance number 309, as appears in book of ordinances "C," page 96, in the city clerk's office of the city of Omaha.

[SEAL.] J. J. L. C. JEWETT,
City Clerk.

Ordinance No. 331.

An ordinance levying taxes for the year A. D. 1875.

Be it ordained by the city council of the city of Omaha:

SECTION 1. That the following taxes be, and the same are hereby, levied on the assessed value of the property within the city of Omaha for the year A. D. 1875: For the general fund of said city, a tax of ten mills on each dollar; for the sinking fund of
442 said city, to pay interest and principal of the bonded indebtedness and on judgments against the said city, a tax of seven mills on each dollar; for the school fund of district number one of said city, a tax of seven mills on each dollar of the assessed value of the property within said district is hereby levied.

SECTION 2. This ordinance shall take effect and be in force from and after its passage.

(S'g'd) THOS. SWOBE,
Pres't City Council.

Passed July 6th, 1875.
Attest: O. C. LUDLOW,
City Clerk.

Approved July 8th, 1875.
(S'g'd) C. S. CHASE, *Mayor.*

STATE OF NEBRASKA, } ss:
Douglas County, }

OMAHA, *March 13th*, 1883.

I hereby certify that the within is a true and correct copy of ordinance number 331, page 124, as appears in book "C" in the city clerk's office of the city of Omaha.

[SEAL.] J. J. L. C. JEWETT,
City Clerk.

Ordinance No. 345.

An ordinance levying taxes for the year 1876.

Be it ordained by the city council of the city of Omaha:

SECTION 1. That the following taxes be, and the same are hereby, levied upon the assessed value of the property within said city for the year 1876: For the general fund of said city, a tax of ten mills on each dollar; for the sinking fund of said city, to pay off interest and principal of the bonded debt and all judgments against the city, a tax of four (4) mills on each dollar; for the school fund of district No. 1 of said city, a tax of four (4) mills on each dollar of the assessed value of the property within said district.

SECTION 2. This ordinance shall take effect and be in force from and after its passage.

Passed July 11th, 1876.

443 (S'g'd) E. C. McSHANE,
Pres't City Council.

Attest: O. C. LUDLOW,
County Clerk.

Approved July 11th, 1876.
(Signed) C. S. CHASE, *Mayor.*

STATE OF NEBRASKA, } ss:
Douglas County, }

OMAHA, *M'c'h* 13th, 1883.

I hereby certify that the within is a true and correct copy of ordinance number 345, as appears in book of ordinances "C," page 162, in the city clerk's office of the city of Omaha.

[SEAL.] J. J. L. C. JEWETT,
City Clerk.

Ordinance No. 351.

An ordinance making annual levy for the year 1877.

Be it ordained by the city council of the city of Omaha:

SECTION 1. That the following taxes be, and the same are hereby, levied upon the assessed value of the property within said city for the year 1877: For the general fund of said city, a tax of ten mills on each dollar; for the sinking fund of said city, to pay off the interest and principal of the bonded debt and judgments against the city, a tax of seven mills on the dollar; for the school fund of district No. 1 of said city, a tax of five mills on each dollar of the assessed value of the property within said district; for the public library fund, ¼ of a mill on each dollar of the assessed value of the property within said city for the year 1877.

SECTION 2. This ordinance shall take effect and be in force from and after its passage.

ROBT K. TAFT,
President City Council.

Passed July 3rd, 1877.
Attest: Z. TAYLOR,
City Clerk.

Approved July 11th, 1877.
R. H. WILBUR, *Mayor.*

STATE OF NEBRASKA, }
Douglas County, } ss:

OMAHA, *March 13th*, 1883.

I hereby certify that the within is a true and correct copy of ordinance number 351, as appears in book of ordinances "C," page 186, in the city clerk's office of the city of Omaha.
[SEAL.] J. J. L. C. JEWETT,
City Clerk.

444 *Ordinance No.* 371.

An ordinance making annual levy for the year 1878.

Be it ordained by the city council of the city of Omaha:

SECTION 1. That the following taxes be, and the same are hereby, levied upon the assessed value of the property within said city for the year 1878: For the general fund of said city, a tax of ten mills on each dollar; for the sinking fund of said city, to pay off the interest and principal of the bonded debt and judgments against the city, a tax of seven mills on the dollar; for the school fund of district No. 1 of said city, a tax of nine mills on each dollar of the assessed value of the property within said district; for the public library fund, one-half of one mill on each dollar of the assessed value of the property within said city for the year 1878.

SECTION 2. This ordinance shall take effect and be in force from and after its passage.

(S'g'd) W. M. DWYER,
Pres't Council.

Passed July 2nd, 1878.
Attest: Z. TAYLOR,
City Clerk.

Approved July 2nd, 1878.
R. H. WILBUR, *Mayor.*

STATE OF NEBRASKA, }
Douglas County, } ss:

OMAHA, *March 13th*, 1883.

I hereby certify that the within is a true and correct copy of ordinance number 371, as appears in book of ordinances "C," page 214, in the city clerk's office of the city of Omaha.
[SEAL.] J. J. L. C. JEWETT,
City Clerk.

Ordinance No. 394.

An ordinance making annual levy for the year 1879.

Be it ordained by the city council of the city of Omaha:

SECTION 1. That the following taxes be, and the same are hereby, levied upon the assessed value of the property within said city for the year 1879: For the general fund of said city, a tax of ten
445 mills on each dollar; for the sinking fund of said city, to pay off the interest and principal of the bonded debt of the city and judgments against the same, a tax of ten mills on the dollar; for the school fund of district No. 1 of said city, a tax of ten mills on each dollar of the assessed value of the property within said district; for the public library fund, a tax of one-half of one mill on each dollar.

SECTION 2. This ordinance shall take effect and be in force from and after its passage.

Passed July 8th, 1879.

(S'g'd) J. D. JONES,
Pres't City Council.

(S'g'd) Z. TAYLOR,
City Clerk.

Approved July 10th, 1879.

(S'g'd) C. S. CHASE, *Mayor.*

STATE OF NEBRASKA, } ss:
Douglas County, }

OMAHA, *March 13th*, 1883.

I hereby certify that the within is a true and correct copy of ordinance number 394, as appears in book of ordinances "C," page 258, in the city clerk's office of the city of Omaha.

[SEAL.] J. J. C. L. JEWETT,
City Clerk.

Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 8, G. Circuit court of the United States for the district of Nebraska. Thomas Bryant *v.* Martin Spitly *et al.* Transcripts of the ordinances of the city of Omaha, Douglas county, Nebraska, levying city taxes for the years 1871 to 1879, both inclusive, to be used as evidence on the part of complainant in the above suit. Received Ap'l 28, 1883, and opened by order of court May 28, 1883. Elmer D. Frank, clerk. Groff & Montgomery, solicitors for Bryant.

446 Thereupon, afterwards, to wit, on the 9th day of May, 1883, a stipulation as to personal property of George W. Frost was filed in said case; which stipulation is in words and figures following, to wit:

In United States Circuit Court, District of Nebraska.

MARTIN SPITLY *vs.* GEORGE W. FROST *et al.*

It is hereby stipulated that for and during all the years for which the lots in controversy were sold for taxes that George W. Frost was in possession of the lots and had sufficient personal property thereon and within the county of Douglas out of which the treasurer could have collected said taxes for said several years.

Complainant does not, however, admit that the treasurer was bound or authorized to collect such taxes out of the property of said George W. Frost.

JNO. L. WEBSTER,
Att'y for Geo. W. Frost.
GROFF & MONTGOMERY,
Att'ys for Complainant in Cross-Bill and Defendant in Original Bill, Bryant.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 8, G. U. S. circuit court, district of Nebraska. Martin Spitley *vs.* Geo. W. Frost *et al.* Stipulation as to personal property of George W. Frost. Filed May 9th, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 18th day of May, 1883, papers marked Exhibits "A" & "B" were filed in said case; which said exhibits are in words and figures following, to wit:

448 I, John Rush, county treasurer of Douglas county, Nebraska, hereby certify that the paper hereto attached, marked "Exhibit A," is a true and correct copy of the tax-lists of said county for the years 1867 to 1879, both inclusive, as to lots 3 and 4, in block 52, in the city of Omaha.

Witness my hand this 17th day of May, 1883.

JOHN RUSH, *Co. Treas.*

Upon the back of said "Exhibit A," appear endorsements in words and figures following, to wit: Tax-lists of Douglas county, Neb. No. 8, G. Thomas Bryant *v.* Frost *et al.* We consent to the filing of this paper for use as evidence, subject to legal objections, in the above suit. Groff & Montgomery, sol's for Bryant. Filed May 18th, 1883. Elmer D. Frank, clerk.

Tax-List of the City of Omaha, 1867.

Block.	Lot.	Owner.	Value.	General tax.	Road tax.	Sinking fund.	Total.
52	3	Thos. Bryant	400 00	2 00	80	1 20	4 00
"	4		6,000 00	30 00	12 00	18 00	60 00

Tax-List of the City of Omaha, 1868.

Block.	Lot.	Owner's name.	Value.	No. of dogs.	Tax on dogs.	Poll tax.	General tax.	Road tax.	Sinking fund.	Total.
52	3	Thos. Bryant	7,200 00				36 00	14 40	21 60	72 00
"	4									

Tax-List of the City of Omaha, 1869.

Block.	Lot.	Owner's name.	Paid.	Mo.	Day	Year	Value.	General fund	Road fund.	C. E. R. R. sinking fund.	Sinking fund city R. R. B.	Total.
52	3	T. C. Durant, Thos. Bryant, G. W. Frost					1,800 00	9 00	3 60	5 40		18 00
"	4	" " "					8,500 00	42 50	17 00	25 50		85 00

Tax-List of the City of Omaha, 1870.

Block.	Lot.	Omaha city.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	General fund.	Road fund.	Sinking fund.	Total.
52	3	.....	Thos. Bryant; Thos. C. Durant, trustee	...	...	...	...	1,800 00	18 00	9 00	9 00	36 00
"	4	.....	" " "	...	...	...	...	5,500 00	55 00	27 50	27 50	110 00

Tax-List of the City of Omaha, 1871.

Block.	Lot.	Omaha city.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	General fund.	Road fund.	Sinking fund bonds.	Total.	Remarks.
52	3	.....	Thos. Durant	...	...	...	...	1,650 00	16 50	.....	9 90	26 40	
"	4	.....		...	...	...	...	4,500 00	45 00	.....	27 00	72 00	

Tax-List of the City of Omaha, 1872.

Description.	Lot.	Block.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	Dogs.	General fund.	Sinking fund.	School fund.	Total.
	3	52	Sold by Co. treas.	Sold.	...	...	...	1,437 50	.....	14 38	10 06	4 31	28 75
	4	.....	Sold by Co. treas.	Sold.	...	...	...	4,140 00	.....	41 40	28 98	12 42	82 80

Tax-List of the City of Omaha, 1867.

Block.	Lot.	Owner.	Value.	General tax.	Road tax.	Sinking fund.	Total.
52	3	Thos. Bryant	400 00	2 00	80	1 20	4 00
"	4		6,000 00	30 00	12 00	18 00.	60 00

Tax-List of the City of Omaha, 1868.

Block.	Lot.	Owner's name.	Value.	No. of dogs.	Tax on dogs.	Poll tax.	General tax.	Road tax.	Sinking fund.	Total.
52	3	Thos. Bryant	7,200 00				36 00	14 40	21 60	72 00
"	4									

Tax-List of the City of Omaha, 1869.

Block.	Lot.	Owner's name.	Paid.	Mo.	Day	Year.	Value.	General fund	Road fund.	C. E. R. R. sinking fund.	Sinking fund city R. R. B.	Total.
52	3	T. C. Durant, Thos. Bryant, G. W. Frost					1,800 00	9 00	3 60	5 40		18 00.
"	4	" " "					8,500 00	42 50	17 00	25 50		85 00

Tax-List of the City of Omaha, 1870.

Block.	Lot.	Omaha city.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	General fund.	Road fund.	Sinking fund.	Total.
52	3	.....	Thos. Bryant; Thos. C. Durant, trustee	...	...	...	...	1,800 00	18 00	9 00	9 00	36 00
"	4	.....	" " "	...	...	...	...	5,500 00	55 00	27 50	27 50	110 00

Tax-List of the City of Omaha, 1871.

Block.	Lot.	Omaha city.	Owner's name.	Paid	Month.	Day.	Year.	Value.	General fund.	Road fund.	Sinking fund bonds.	Total.	Remarks.
52	3	.....	Thos. Durant	...	...	...	...	1,650 00	16 50	.....	9 90	26 40	
"	4	.....		...	...	...	...	4,500 00	45 00	.....	27 00	72 00	

Tax-List of the City of Omaha, 1872.

Description.	Lot.	Block.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	Dogs.	General fund.	Sinking fund.	School fund.	Total.
	3	52	Sold by Co. treas.	Sold.	...	...	...	1,437 50	.....	14 38	10 06	4 31	28 75
	4	.....	Sold by Co. treas.	Sold.	...	...	...	4,140 00	.....	41 40	28 98	12 42	82 80

Tax-List of the City of Omaha, 1873.

Description.	Lot.	Block.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	Dogs.	General fund.	Sinking fund.	School fund.	Total.	Remarks.
	3	52	P'd Co. treas.	P'd	Sept.	9	'74	1,500 00	----	15 00	11 25	11 25	37 50	
	4	"	do.	P'd	Sept.	9	'74	3,500 00	----	35 00	26 25	26 25	87 50	

Tax-List of the City of Omaha, 1874.

Description.	Lot.	Block.	Owner's name.	Paid.	Month.	Day.	Year.	Value.	Dogs.	General fund.	Sinking fund.	School fund.	No. of receipt.	Total.	Remarks.
	3	52	Thos. Bryant	Paid.	June	4	'75	1,500 00	----	15 00	7 50	7 50	14	30 00	
	4	"	do.	Paid	June	4	'75	3,300 00	----	33 00	16 50	16 50	14	66 00	

Tax-List of the City of Omaha, 1875.

Description.	Lot.	Block.	Owner's name.	No. of receipt.	Paid.	Month.	Day.	Year.	Value.	Dogs.	General fund.	Sinking fund.	School fund.	Total.	Remarks.
	3	52	T. C. Durant, Thos. Bryant	150	Paid	July	14	'76	1,400 00	----	14 00	9 80	9 80	33 60	
	4	"	E. Satterthweit	361	Paid	Apr.	27	'76	3,300 00	----	33 00	23 10	23 10	79 20	

Tax-List of the City of Omaha, 1876.

Description.	Lot.	Block.	Owner's name.	No. of receipt.	Paid.	Month.	Day.	Year.	Value.	General fund.	Sinking fund.	School fund.	Library fund.	Total.	Remarks.
	3	52	T. C. Durant, Thos. Bryant	143	Paid	July	31	'77	1,200	12 00	4 80	4 80	------	21 60	
	4	"	do. do.	143	Paid	"	"	"	2,800	28 00	11 20	11 20	------	50 40	

Tax-List of the City of Omaha, 1877.

Description.	Lot.	Block.	Owner's name.	No. of receipt.	Paid.	Month.	Year.	Value.	General fund.	Sinking fund.	School fund.	Library fund.	Total.	Remarks.
	3	52	T. C. Durant	5	Sold	Nov. 6	'78	950	9 50	6 65	4 75	.24	21 14	
	4	"	do.	5	Sold	"	"	2,200	22 00	15 40	11 00	.55	48 95	

Tax-List of the City of Omaha, 1878.

Description.	Lot.	Block.	Owner's name.	No. of receipt.	Paid.	Month.	Day.	Year.	Value.	General fund.	Sinking fund.	School fund.	Library fund.	Total.	Remarks.
	3	52	T. C. Durant	34	Sold.	Jan.	7	'80	950	9 50	6 65	8 55	48	25 18	
	4	"	do.	34	Sold.	"	"	"	2,200	22 00	15 40	19 80	1 10	58 30	

Description.	Lot.	Block.	Owner's name.	No. of receipt.	Paid.	Month.	Day.	Year.	Value.	General fund.	Sinking fund.	School fund.	Library fund.	Total.	Remarks.
	3	52	U. P. R. R. Co.	23	Sold.	Dec.	24	'80	960	9 00	9 00	9 00	45	27 45	
	4	"	do.	23	Sold.	Dec.	24	'80	2,000	20 00	20 00	20 00	1 00	61 00	

454 OMAHA, *May 16th*, 1883.

I hereby certify that annexed list is a true and correct copy of the tax-lists of the city of Omaha from the years 1867 to 1879, both inclusive.

[SEAL.] J. J. L. C. JEWETT,
City Clerk.

Upon the back of said paper appear endorsements in words and figures as follows, to wit: Tax-lists of the city of Omaha, 1867 to 1879. No. 8, G. Bryant *v.* Frost *et. al.* We consent to the filing of these papers for use in evidence, subject to legal objections, in above suit. Groff & Montgomery, sol's for Bryant. Filed May 18, 1883. Elmer D. Frank, clerk.

455 Thereupon, afterwards, at the May term of said court, on the 25th day of June, 1883, the following proceedings were had, as appear of record on folio 716, Journal H of said court, to wit:

Decree.

THOMAS BRYANT, Complainant,
vs.
GEO. W. FROST *et al.*, Defendants. } No. 8, G.

This cause came on to be heard upon the pleadings and proofs and the argument of counsel, and the court, being fully advised in the premises, finds—

That the right of the complainant to recover in this suit the taxes paid by him for the year 1871, on lot 4, and for the years 1872, 1873, and 1874, on both lots, of the real estate described in the pleadings, is barred by lapse of time, and that the complainant should recover all the other taxes paid by him, with interest thereon at the rate of 12 per cent., except for the year 1879, which should be recovered with interest at 10 per cent., and that the complainant should be subrogated as to said taxes to all the rights of the State of Nebraska, county of Douglas, city of Omaha, and other subdivisions of the State, and should have a lien upon each lot separately for the aggregate amount of such taxes on each lot, and interest paid upon each lot, of the said real estate which is hereinafter described.

It is therefore by the court considered, adjudged, and decreed that the complainant, Thomas Bryant, has a lien upon lot 3 of the said real estate for the sum of $861.59, and upon lot 4 of the said real estate for the sum of $1,821.04, said sums being the aggregate amount of taxes which he is entitled to recover as above found, with interest thereon to this date, and that the said amounts, with interest and the costs of this suit, shall be paid by the defendants within thirty days from the date of this decree to the said
456 complainant or the clerk of the court for him; and, in default thereof, that the said real estate be sold the same as in cases of foreclosure of mortgages, each lot separately, by Elmer D. Frank, who is hereby appointed a special master to make said sale, and that

out of the proceeds of said sale, which the said master shall bring into this court for distribution, there shall be paid—

First. The costs of this suit.

Secondly. To the complainant, Thomas Bryant, out of the proceeds of the sale of said lot 3 the said sum of $861.59, and interest thereon from the date of this decree; and out of the proceeds of the sale of said lot 4 the said sum of $1,821.04, and interest thereon from the date of this decree.

Thirdly. The surplus, if any, to the party who shall be entitled to the same under the order of this court.

The real estate above-mentioned, and to be sold as above provided, is described as follows: Lots 3 and 4, in block 52, in the city of Omaha, in Douglas county, State of Nebraska.

The said Frank is appointed such special master, on the written request of counsel for parties hereto.

(Signed) ELMER S. DUNDY, *Judge.*

457 UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the eighth circuit and district of Nebraska, certify that the foregoing folios, from one to —, contain true and faithful transcripts of all the pleadings and proceedings of record and on file in my office as said clerk in the case of Martin Spitley, complainant, *vs.* George W. Frost and others, defendants.

Witness my hand and the seal of said circuit court, at Omaha, Nebraska, this 10th day of September, A. D. 1883.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Nebraska C. C. U. S. No. 235. George W. Frost and Abby B. Frost, appellants, *vs.* Martin Spitley. Filed 4th March, 1884.

121-552

APR 4 1887

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886.

NO. 235.

GEORGE W. FROST AND ABBY B. FROST, *Appellants.*
vs.
MARTIN SPITLEY.

Appeal from the United States Circuit Court for District Of Nebraska.

BRIEF FOR APPELLANTS.

JOHN L. WEBSTER,
Solicitor for Appellants.

REES PRINTING CO., OMAHA.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886.

NO. 238

GEORGE W. FROST AND ABBY B. FROST, *Appellants.*
vs.
MARTIN SPITLEY.

Appeal from the United States Circuit Court for District Of Nebraska.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

George W. Frost went into the employ of the Union Pacific Railroad Company and the Credit Mobilier of America in the year 1865. By an understanding between the parties the Credit Mobilier of America purchased lots 3 and 4 in block 52 in the city of Omaha, and built

a house thereon for a home and residence for George W. Frost, but took the legal title thereto in the name of Thomas C. Durant, (who was an officer in said Corporations) in trust for said Frost, until the end of his employment, when upon a final settlement between the parties, said property was to be conveyed to said Frost.

George W. Frost with his family went into possession of said property and occupied the same as a home. Thomas C. Durant failed to make a conveyance of said lots to Frost, and on November 11, 1870, Frost made a written contract with John I. Redick, then an attorney at Omaha, as follows:

"In consideration of twenty-five hundred dollars as at-"torney's fee I agree with Hon. G. W. Frost that I will bring "suit and procure through the Courts or otherwise, to him a "good title to the premises he, said Frost, now occupies as "his residence in the city of Omaha, and in case any settle-"ment or arrangement of the suit, then said Frost is to pay "in proportion only, and in case said Frost fails to procure "said title at all, then the said attorney is to have a mere "nominal fee for his services, towit, $100.
"Nov. 11, 1870.

JOHN I. REDICK,
GEO. W. FROST."

(P. 12, folio 19, and p. 100 folio 152).

Pursuant to above contract John I. Redick began an action in the State Courts in favor of George W. Frost and against the Union Pacific Railroad Company, the Credit Mobilier of America and Thomas C. Durant, to obtain for Frost the legal title to said lots. (For pleadings in that action see pp. 147, 152, 158, 160, 162, 167, of record.)

Said action was prosecuted to a decree March 27, 1876, (p. 146-7 record), finding that said Thomas C. Durant held

the legal title to said lots in trust for George W. Frost (p. 147, folio 220).

It was further found by the decree that Frost was still indebted on the property in the sum of $302.71 (p. 144, folio 220) and provided as follows: (P. 147, folio 220).

"It is therefore ordered and adjudged by the Court that "upon the Plaintiff's depositing with the Clerk of the Court "for the use of said Defendants within thirty days after the "close of this term the sum of $302.71, together with inter- "est on the sum from the 31st of May, 1869, that the said "said Defendant, Thomas C. Durant, convey to said Plain- "tiff, or cause to be conveyed to him, by a good and suffi- "cient deed, with the usual covenants of warranty, the prop- "erty in controversy, towit, lots 3 and 4, in block 52."

The $302.71 provided for in the decree was not paid within the time named in the decree. Frost contended that Redick, by virtue of the written contract of his employment as attorney, should pay this $302.71, so as to procure for Frost a good legal title to the premises, and Redick contended that he was entitled to have and receive the $2,500 attorney fee without paying the $302.71.

Whereupon, June 26th, 1877, Redick began an action at law in the United States Circuit Court for the District of Nebraska, on said contract, to recover from Frost the $2,500 attorney fee.

The Petition in that action (p. 70, folio 109 Record) avers that Frost was then a resident of "Omaha," and a "citizen of the State of Nebraska," and further states (p. 72, folio 112): "And said Frost is thereby now in the quiet, peaceable and undisputed possession and occupancy of said

premises, which are of great value, towit: upwards of $12,000."

Afterwards, on July 30, 1877, Redick filed an affidavit for an attachment (p. 77, folio 120), charging, among other things, that Frost was a non-resident of Nebraska.

A writ of attachment was issued (p. 79, folio 122,) and levied upon the two lots, 3 and 4, in block 52, also upon the household furniture, and family carriage, then on the premises (p. 79, folio 122), and which were appraised as appears by the return of the Marshal, as follows (p. 80, folio 123):

"1 carriage	$ 250 00
"1 green rep parlor set	80 00
"1 green velvet parlor set	80 00
"1 bed-room parlor set	50 00
"Lots 3 and 4, in Block 52, City of Omaha, Douglas County, Nebraska	Lot 3, 2,000 00
	Lot 4, 4,000 00
Total	$6,460 00"

On March 14, 1878, a judgment was rendered in said cause in favor of Redick and against Frost for $2,388.85 (p. 86, folio 132).

After said judgment an order of sale on the attachment was issued (p. 90, folio 37), which commanded the Marshal to "*sell so much* of the judgment and costs," etc., but contained no command to sell the property attached.

On this order of sale the following appraisement was made (p. 92, folio 139), to wit:

"Lot 3, in Block 52	$ 50 00
"Lot 4, in Block 52	450 00
"Total	500 00"

"The said Defendant's only interest in said property, as "appears by the records of Douglas county, Nebraska, being "that of occupancy and possession, we appraise the said "interest as above."

All said attached property was sold to John I. Redick for the following sums, on August 24, 1878, to wit:

(P. 91, folio 139) "One carriage	$ 50 00
"One green rep parlor set furniture	30 00
"One green velvet set furniture	30 00
"One bed-room set furniture	20 00
"Also Lot 3, in Block 52	50 00
"Also Lot 4, in Block 52	300 00
"Total	$480 00"

This sale absorbed the two lots and the furniture and carriage, and still left due Redick on his judgment for Attorney's fee about $2,000.

Frost and Abby B. Frost, his wife, and a daughter (p. 56, folio 88) had been oocupying these premises as a home from the time of the purchase in 1865, and claimed the same as a homestead, and have ever since continued to so occupy the same as a homestead and now do so occupy the same, but were temporarily absent (p. 56, folio 88) for eighteen months from July, 1877, while Frost was acting as United States Indian Agent in Montana, but such absence was without any intention to abandon their residence upon or homestead rights in this property (p. 284), and Redick, the purchaser, and the Marshal were notified at the time of the sale that the said lots were claimed by Frost as a homestead, and not subject to attachment, levy or sale. (P. 172, folio 258.)

Exceptions were filed to this sale (p. 93, folio 141), and an order was made confirming a sale made "*the 24th day of August*, 1877," (p. 94, folio 142), whereas the sale made to Redick of the lots in controversy was made on the "*24th day of August*, 1878."

The Marshal made a deed to Redick the purchaser.

After the commencement of the attachment suit by Redick, an action in ejectment was commenced in the State Court by Thomas C. Durant against Frost, his wife, and Bemis (who was the tenant during Frost's temporary absence in Montana as Indian Agent), and after Redick had obtained his Marshal's deed, and on June 8, 1880, he paid into the State Court for use of Durant the amount due on the original decree, and which was accepted by Union Pacific Railroad Company and Credit Mobilier of America in satisfaction of the decree (p. 138, folio 207), and the ejectment suit was dismissed. (P. 138, folio 208.)

Afterward, on September 9, 1880, Redick conveyed these lots to Martin Spitley (p. 111), who, on September 30, 1880, filed his bill in the Circuit Court to quiet the title to these lots in himself. Spitley's only source of title was that of Redick—if any—derived from the Marshal's sale.

In this bill George W. Frost, Thomas C. Durant, Credit Mobilier of America, and Thomas Bryant were made Defendants.

Durant and Credit Mobilier of America were not brought into Court, and Bryant appeared holding tax deeds and tax liens on the premises, but with whom we have nothing to do on this appeal.

George W. Frost filed a demurrer to the bill of complaint (p. 8, folio 13), which demurrer was overruled, and to which ruling the Defendant Frost excepted.

After answer (p. 11) filed by George W. Frost, (by leave of Court) George W. Frost and Abby B. Frost, his wife, filed their cross-bill (pp. 27 to 31) setting forth that they had been husband and wife for thirty years and (with a daughter) had resided in Omaha for fifteen years last past (p. 27, folio 42), and that during all of said time said Frost was the head of a family depending on him for support, and that during said last fifteen years had lived upon, occupied and claimed these lots as a homestead, (p. 28, folio 44) and still continues to occupy and claim the same as a homestead.

That said lots 3 and 4 lie adjoining each other, and are within the corporate limits of the city of Omaha (p. 28, folio 44).

The cross-bill further alleges that the judgment in the case of Redick vs. Frost was based on a written contract to which Abby B. Frost, the wife, was not a party, and which contract did not contain any stipulation waiving the homestead right of Frost and wife to the lands in dispute (p. 28, folio 44), and that under the laws of Nebraska the homestead of George W. Frost and Abby B. Frost, his wife, was not liable to attachment and sale on said contract or judgment (p. 28, folio 45), whereby said sale was void, and that said Redick and his grantee, Martin Spitley, acquired no title to these lots by said sale (p. 29, folio 46).

That said Redick knew the homestead rights of said G. W. Frost and Abby B. Frost during all of said proceedings

and at the time of said purchase, and was notified at the time of said purchase by him that said property was claimed as such homestead and not subject to sale (p. 29, folio 46).

That said judicial sale took place while said Frost and wife were temporarily absent from Omaha, and at said Crow Indian Agency, whereby they were prevented from presenting their homestead claim in person.

That said sale was void for the further reasons, towit:

First. Because the Appraisers found that said Frost had no title to said lands but appraised his title as that of "occupancy and possession only" at $500.

Second. That in making the appraisement the Appraisers did not estimate said lands at their real *value in money* and then deduct from said real value the liens upon said property to ascertain the interest of the Defendant Frost in said lands as required by law, and that said Appraisers in ascertaining the interest of said Frost in said land did deduct the amount of outstanding tax titles thereon, contrary to law (p. 30, folio 47-8).

Third. Because the Marshal did not sell said lots with their appurtenances, but sold simply the right of occupancy and possession thereof, without any authority of law, (p. 30, folio 48).

That said lots were worth more than the sum of $6,000, whereby the Appraisers ignored the real value of said lands and that said appraisement was fraudulent. (p. 31, folio 48.)

That after said judicial sale to said Redick said G. W. Frost and said Abby B. Frost acquired a full and complete

title to said lots, which is subsequent to, and paramount to any claim of said Redick or his grantee. (P. 31, folio 49.)

The said Complainant, Martin Spitley, has no interest in said lands, and that his pretended claim to said lands is fraudulent and for the purpose of defrauding said G. W. Frost and Abby B. Frost of their title to the same.

That afterward, on October 1, 1881, Frost and wife applied to the Court for leave to file an amendment to their cross-bill, as follows (p. 51, folio 81):

"Now come Defendants, George W. Frost and Abby B. Frost, and move the Court:

"1. For leave to amend their cross-bill herein by setting out the fact that the pretended order of sale in Redick vs. Frost, under which the lots in controversy were sold, was not an order to sell the lots in controversy, but was null and void, in that it ordered a sale of the 'judgment and costs,' so as to conform to the testimony in that regard.

"2. By amending said cross-bill in regard to the order confirming the sale in Redick vs. Frost so as to set out the fact that the pretended order confirming the sale was an order confirming a sale made August 26, 1877, while the sale made as authorized by said order of sale was made August 24, 1878, so as to conform to the testimony in that regard."

Said motion was supported by an affidavit by Jno. L. Webster explaining why these matters were omitted from original cross-bill. (P. 52, folio 82.)

This motion went to the Master, who was then acting under an order of reference of the entire case, to take testimony and report the facts and findings of law.

MASTER'S REPORT.

On the question of the *homestead right of Frost and wife* in the premises, the Master found as follows (p. 56,folio 86):

1st. That George W. Frost and Abby B. Frost are hus-"band and wife and have resided in Omaha for the past "fifteen years, and at no time since have lost their residence "in Omaha by reason of absence therefrom.

2d. That for about eighteen months, commencing in "July or August, 1877, they temporarily resided at Crow "Agency, Montana, where Frost was acting officially as In-"dian agent.

3d. That during their absence the house on lots 3 and "4, block 52, was occupied by a friend, without rent, the "household goods of Frost remaining therein.

4th. That said Frosts then claimed said premises as "their homestead."

5th. That the judgment of Redick against George W. "Frost was based upon a written contract signed by Frost "alone, and was not signed nor executed by Abbie B. Frost, "his wife.

6th. There was no stipulation that said contract should "bind the homestead of said Frost.

7th. That as to George W. Frost, his claim of home-"stead in said premises was fully adjudicated in the case of "Redick vs. Frost in this Court.

8th. I find at the time of sale of said premises on Red-"ick's said judgment, notice was given by Hon. J. L. Web-"ster, solicitor of Frost, to the marshal, that Frost claimed "said property as his homestead."

On the question of the *appraisement*, the Master found (p. 56, folio 88):

"I find that the question of appraisement of said prop-

"erty was presented to this Court on confirmation, and was "passed on by His Honor, Judge Dundy."

As to the *Order of Sale* and *Order of Confirmation*, the Master found (p. 56, folio 89):

"On request of solicitor for George W. Frost and Abby "B. Frost I find specially as follows: First, That the origin- "al order of sale in Redick vs. Frost is lost, and the complete "record thereof offered in proofs reads: * * * * 'the "'Marshal to sell * * * * the judgment and costs.' "Second, That the order of confirmation in said case names "the date of sale confirmed as August 24, 1877, while the "return of the Marshal and other records in case showed "that the sale was actually made August 24, 1878."

On the motion of Frost and wife for leave to file the amendment to cross-bill the master found (p. 55, folio 87):

"On application of Hon. J. L. Webster for leave to amend "answer of George W. Frost I find that such amendment "should not be allowed, as the facts therein set forth are "merely clerical errors and do not affect the merits of the "controversy."

Frost and wife filed the following exceptions to the report of the Master (pp. 209, 210, 211, 212):

"Exceptions taken by George W. Frost and Abby B. "Frost, Complainants in cross-bill, to the report made here- "in by Dwight G. Hull, one of the Masters of this Court, to "whom this case was referred by an order of this Court, and "which report bears date Oct. 26, 1881."

First Exception. For that the said Master in his report "finds specially on said cross-bill of George W. Frost and "Abby B. Frost that the original order of sale of Redick "vs. Frost is lost, and the complete record thereof offered in

"Court of the United States in the above entitled case, and "wherein John I. Redick is Plaintiff and George W. Frost is "Defendant, do upon our oaths, appraise said property at "its real value in money, after deducting all prior liens "thereon, towit:

"OMAHA, DOUGLAS COUNTY, NEBRASKA.

"Lot 3, in Block 52	$ 50 00
"Lot 4, in Block 52	450 00
"Total	$500 00

"(The said Defendant's only interest in said property, as "appears by the records of Douglas county, Nebraska, "being that of occupancy and possession, we appraise the "said interest as above.)

"Given under our hands this 20th day of July, 1878.

"WILLIAM DAILY,
"*Marshal of the United States for the District of Nebraska.*

"By ELLIS L. BIERBOWER, Deputy,
"JOHN CAMPBELL,
"JOHN B. FURRAY."

Third Exception. "That the master failed to find what "liens or incumbrances were deducted by the appraisers in "ascertaining the interest of George W. Frost, in said lots, "whereas he should have found as a fact that said ap- "praisers deducted outstanding tax titles on said lots in "ascertaining the interest of George W. Frost therein."

Fourth Exception. "That said master should have "found the additional facts on the question of homestead "that said lots 3 and 4, in block 52, are contiguous and "are within the corporate limits of the city of Omaha, in "the state of Nebraska, and are less than one-half acre in "extent, and have a dwelling house and out-buildings "thereon, and were occupied and used in good faith by

"George W. Frost, and Abby B. Frost, husband and wife, "as a homestead for more than ten years last past, and are "still occupied and used."

Fifth Exception. "That the master found that as to "George W. Frost, his claim of homestead in said premises "was fully adjudicated in the case of Redick vs. Frost in "this Court."

"Whereas the master should have found that the home-"stead rights of George W. Frost and Abby B. Frost were "not adjudicated in the case of Redick vs. Frost.

Sixth Exception. "That the master should have further "found that the fact that George W. Frost claimed said lots "as a homestead, and that they were not subject to sale ap-"pears of record in the case of Redick vs. Frost."

Seventh Exception. "That the Master found that the "payment of the amount found due by the District Court "of Douglas County from Frost to the Credit Mobilier was "made by Redick, he having by reason of his purchase at "marshal's sale succeeded to the rights of the said George "W. Frost in said lots.

"Whereas, he should have found that John I. Redick did "not acquire the interest of George W. Frost in said lots by "reason of his purchase at said pretended marshal's sale thereof, and that the payment by him to the clerk "of the State Court of the amount found due to the "Credit Mobilier by said State Court was a voluntary pay-"ment, and did not vest in him, said Redick, any title to "said lots."

Eighth Exception. That the Master finds, as a conclusion of law, "that the sale of said lots and confirmation thereof "in the case of Redick vs. Frost, being prior to June 1st, "1879, when the new homestead law took effect, the said

"Abby B. Frost did not acquire any interest or estate in "said lots, of homestead or otherwise.

"Whereas, he should have found that at the time of "said sale of said lots, George W. Frost and Abby B. Frost "did have a homestead right in said lots, which was not de- "stroyed or affected by said sale of said lots on the judg- "ment in the case of Redick vs. Frost."

Ninth Exception. "That the said Master found that the cross-bill of George W. Frost and Abby B. Frost against Martin Spitley should be dismissed at the cost of said Frost.

"Whereas, he should have found that no title passed to "John I. Redick, the grantor of Martin Spitley, to the lots "in controversy by reason of the pretended sale thereof in "the case of Redick vs. Frost, and that said George W. Frost "and Abby B. Frost are entitled to a decree as prayed in "their said cross-bill."

These exceptions to the Master's report having been submitted to the Court, the Circuit Judge filed an opinion (pp. 231 to 236) sustaining the homestead right of Frost and wife in the premises, and entered a decree (p. 236, folio 343), in which it was "ordered, adjudged and decreed that the property in controversy, towit: lots 3 and 4, in block 52, * * * were the homestead of George W. Frost and Abby B. Frost at the time of the levy of the attachment and at the time of the sale made under the order of sale issued in the case of John I. Redick vs. George W. Frost," and that Martin Spitley acquired no title to said lots by reason of said sale, and dismissed his bill and quieted the title in Frost, for the reason that the homestead law in force at the time of the sale, and which was the homestead law which the Court considered in his first opinion and in the

entering of the first decree did not apply to this case, but that the homestead law in force at the time of the making of the contract between Redick and Frost should govern the case, and that under such prior homestead law Abby B. Frost, the wife, had no interest in the homestead, and that the rights of Geo. W. Frost in the homestead were cut off by the order of confirmation.

ERRORS COMMITTED BY THE COURT BELOW.

I.

The Court erred in not sustaining the demurrer of the Defendant Frost to the bill of Martin Spitley.

II.

That the Court erred in holding that the homestead law in force at the time of the levy of the writ of attachment and of the sale did not apply to this case.

III.

That the Court erred in holding that the homestead law in force at the time of the making of the contract between Redick and Frost should govern the case.

IV.

That the Court erred in holding that Abby B. Frost had no homestead interest in the property in controversy as against the judgment of Redick against Frost.

V.

That the Court erred in holding that the order of confirmation cut off the homestead right of Frost and wife in the property in controversy.

VI.

That the Court erred in holding that John I. Redick acquired any title to the property by virtue of the judicial sale.

VII.

That the Court erred in holding that the order of confirmation cured the defects relating to the order of sale and the defects relating to the appraisement.

VIII

That the Court erred in overruling the exceptions of George W. Frost and Abby B. Frost to the findings of the Master.

IX.

That the Court erred in entering a decree quieting the title in Martin Spitley, the grantee of John I. Redick.

X

That the Court erred in dismissing Cross Bill of Geo. W. and Abby B. Frost

BRIEF.

FIRST POINT.

THE DEMURRER OF THE DEFENDANT, GEORGE W. FROST, TO THE BILL OF COMPLAINT OF MARTIN SPITLEY, SHOULD HAVE BEEN SUSTAINED.

Whatever title Martin Spitley had was derived by the deed of conveyance from John I. Redick.

The title of Redick was that derived by the sale of this property by the Marshal to him. Redick was the execution purchaser, and the Defendant Frost was a judgment debtor in possession of the property.

Thomas C. Durant and the Credit Mobilier of America were not served, and were not necessary parties.

The action as between Spitley and Defendant Thomas Bryant related only to Bryant's tax deeds and tax liens, and had no connection whatever with the controversy as between Spitley and Frost. The action between Spitley and Frost was simply one relating to the possession of the property. The true remedy of Spitley as against Frost should have been by an action in ejectment, and as between these parties the remedy at law was adequate.

Fussell vs. Gregg, 113 U. S., 550.

SECOND POINT.

THE PROPERTY WAS THE HOMESTEAD OF FROST AND WIFE, AND WAS NOT SUBJECT TO ATTACHMENT OR SALE ON THE CLAIM OR JUDGMENT OF REDICK.

In this connection we will consider the second, third and fourth errors complained of as they each relate to this question of homestead.

The homestead law of Nebraska in force at the date of the contract between Redick and Frost, in so far as the same applies to this case, was as follows:

General Statutes of Nebraska of 1873, pp. 616-617.

Sec. 525. "A homestead consisting of any quantity of "land, not exceeding one hundred and sixty acres, and the "dwelling house thereon and its appurtenances, to be "selected by the owner thereof, and not included in any in- "corporated city or village, or, instead thereof, at the option "of the owner, a quantity of contiguous land not exceed- "ing two lots, being within an incorporated town, city or "village, and according to the recorded plat of such incor- "porated town, city or village, or in lieu of the above, a "lot or parcel of contiguous land, not exceeding twenty "acres, being within the limits of an incorporated town, "city or village, the said parcel or lot of land not being "laid off into streets, blocks and lots, owned and occupied "by any resident of the state being the head of a family, "*shall not be subject to attachment levy, or sale, upon execution* "*or other process* issuing out of any Court in this State so "long as the same shall be owned and occupied by the "debtor as such homestead."

At the time of the issuing of the order of sale and at the time of the sale of the premises to Redick a new

homestead law was in force, being the act of February 19, 1877.

Laws of Nebraska, 1877, (pp. 34 to 38 incl.). So much of that law as applied to this case is as follows:

Sec. 1. "That where there is no special declaration of "the statute to the contrary, the homestead of every family, "whether owned by the husband or wife, is exempt from "judicial sale."

Sec. 3. "A conveyance or encumbrance by the owner, "is of no validity unless the husband and wife, if the "owner is married, concur in and sign the same joint in- "strument."

Sec. 5. "The homestead may be sold for debts created "by written contract, executed by the persons having the "power to convey, and expressly stipulating that the home- "stead is liable therefor, but it shall not in such case be "sold except to supply the deficiency remaining after ex- "hausting the other property pledged for the payment of "the debt in the same written contract."

Sec. 7. "It may contain one or more lots or tracts of "land, with the buildings thereon, and other appurtenances "subject to the limitations contained in the next section, but "must in no case embrace different lots and tracts unless "they are contiguous, and are habitually and in good faith "used as a part of the same homestead."

Sec. 8. "If within a town plat, it must not exceed one- "half of an acre in extent, and if not within a town plat it "must not embrace in the aggregate more than one hundred "and sixty acres. But if, when thus limited, in either case "its value is less than five hundred dollars, it may be en- "larged till its value reaches that amount; *provided*, that a "homestead shall in no event exceed in value the sum of "($2,000) two thousand dollars."

Sec. 19. "Upon the death of either husband or wife, the

"survivor may continue to possess and occupy the whole "homestead until it is otherwise disposed of by law."

Sec. 20. "The setting off of the distribution share of the "husband or wife in the real estate of the deceased, shall "be such a disposal of the homestead as is contemplated "in the preceding section But the survivor may elect to "retain the homestead for life in lieu of such share in the "real estate of the deceased; but if there be no such survivor, "the homestead descends to the issue of either husband or wife "according to the rules of descent, unless otherwise directed "by will, and is to be held by such issue exempt from any "antecedent debts of their parents or their own."

Sec. 21. "If there is no such survivor or issue, the "homestead is liable to be sold for the payment of any "debts to which it might at that time be subjected if it had "never been held as a homestead."

Sec. 21. "Subject to the rights of the surviving hus- "band or wife as declared by law, the homestead may be "devised like other real estate of the testator."

"Approved, February 19, A. D. 1877."

GEORGE W. FROST testified (p. 118, folio 177) that he had been occupying these lots as a home since the 15th of October, 1866, and was the head of a family consisting of himself, wife and daughter now living upon this property; that he left for Montana (p. 119, folio 178) about the first of July, 1877, to act as United States Indian agent, but at that time had no intention of changing his residence, and refused to go until he had consulted counsel upon what effect it would have upon his homestead rights (p. 119, folio 179) and returned to Omaha about the middle of December, 1879 (p. 120, folio 179).

While in Montana he refused to vote or do anything

toward making a residence there: that when he left Omaha on this official duty it was with the intention of returning to Omaha at the end of the year, and if he could not return at that time his family were to return and occupy the premises (p. 121, folio 181).

That when he left Omaha on this official business he left all his household furniture in this house and the family left their wearing apparel therein, and he left his nephew, Geo. P. Bemis, in care of the property, without rent (p. 121, folio 181). That he and his family have been occupying this property ever since his return from Montana.

ABBY J. SHAW, the daugthter, testified (p. 132, folio 199) that when Frost and family went to Montana the household furniture and wearing apparel were left in the house, because they did not expect to remain away (p. 133, folio 199) and that it was not the intention to abandon these lots as a home when they went to Montana.

ABBY B. FROST, the wife, testified (p. 169, folio 253): The family had been occupying these lots as a home since the fall of 1866, and have ever since continued to occupy the same as a home, excepting the time when they were in Montana while Geo. W. Frost was acting as United States Indian agent.

That there was no intention of abandoning the homestead, but that they expected to return to it (p. 170, folio 255), and that she never made any conveyance or release whatever of her homestead rights in this property, and that the furniture was left in the dwelling-house on the lots, and

that they put the house in charge of Mr. Bemis to take care of the same (p. 171, folio 256).

It appears from the testimony of MR. WEBSTER (p. 172, folio 258) that Mr. Frost, just before his departure for Montana, consulted him relative to his homestead right to this property, as to whether or no the same would be lost by reason of his official absence as United States Indian Agent, and, further, that Mr. Frost refused to rent the property (p. 173, folio 259), as he intended to maintain the same as his home, and did not desire to have the property injured by tenants.

JULIA P. BEMIS testified (p. 174, folio 216) that she and her husband took the house to take care of it for the Frost while they were absent; that the furniture was left in the house or stored away just as the family had used it, including the kitchen furniture; that the wearing apparel was left in the closets, and when they returned they came into the house and used it just as they had used and occupied it before, and that they had no intention of abandoning their home or staying away any great length of time.

All of this testimony stands uncontradicted in the record.

It appears from the report of the Master (p. 56, folio 88) heretofore quoted in the statement of this case, that Frost and his family had occupied these lots as a homestead for about fifteen years, and were never absent therefrom except while Frost was acting as United States Indian agent, at Crow agency in Montana for a period of about eighteen months; that by said absence they did not lose their residence in Omaha or homestead rights to this property.

In reference to this temporary absence in Montana the Circuit Judge said in his opinion (p. 233, folio 338):

"A temporary removal from the premises occupied as a "homestead, with the intention of returning is not an aban- "donment thereof and does not render the premises liable "to sale upon execution. It is well settled that a person "employed in the public service of the United States does "not lose his residence by leaving his place of abode and "residing temporarily at the place where his official duties "require him to be."

Again the Circuit Judge said (p. 234, folio 338): "In "the present case there is abundant evidence that Frost and "wife had no intention of abandoning their home in Omaha; "they left their house there in charge of a friend, from whom "they collected no rent; the most of their furniture they "left in it, and they expressed their purpose to return to it. "It is therefore entirely clear that there was no abandon "ment of the homestead."

Thompson on Homestead, Sec. 287, 266.
Potts vs. Davenport, 79 Ill., 16.
Hughes vs. Hughes, 74 Ill., 312.
McMullen vs. Warner, 38 Tex., 410.

In this view of the facts and of the law the first decree was entered quieting the title in Frost and wife on the theory that the homestead law of February 19, 1877, governed the case.

On the rehearing this decree was set aside and a new decree entered quieting title in Martin Spitley upon the theory that the homestead law in force when the contract was entered into between Redick and Frost controlled the case.

The Circuit Judge held that under the homestead law in force when the contract was made, Abby B. Frost had no

interest in the homestead, but that the homestead right could be claimed by Frost alone, and that his right to the homestead was cut off by an order confirming that sale.

The homestead law of 1877 being in conflict with the prior homestead law, necessarily repealed it.

The law of 1877 was the only homestead law in force at the time when the attachment was levied upon this property and at the time when the sale took place.

I do not know upon what principle it can be urged with any great force that the homestead law in force at the time when a contract is made shall forever remain in force as to that contract, and, as to any judgment that may grow out of thatcontract when the Legislature has seen fit to repeal the law.

We are perfectly willing to concede that if the homestead law in force in 1877 so enlarged the homestead rights of Frost as to impair the contract made with Redick November 11th, 1870, then the Court would be justified in saying that the new homestead law of 1877 was unconstitutional as to this particular contract. Such, however, is not the case here.

Under the old homestead law the head of a family could hold as a homestead two lots within an incorporated town, regardless of their valuation.

The record shows that these lots were appraised at $6,000 on the writ of attachment (p. 107).

Under the old homestead law, therefore, at the time when the contract with Redick was entered into, Frost was

entitled to claim two lots, even though worth $6,000, as a homestead.

Under the homestead law of 1877, a limitation was put upon the value of the homestead exemption, by which the homestead shall in no event exceed in value the sum of $2,000.

It will be seen therefore that the extent of the homestead right was diminished by the act of 1877 and not increased.

There is no provision in the act of 1877 by which Geo. W. Frost acquired any enlarged interest in the property held as a homestead in any manner or form.

It is true that under the act of 1877, the wife acquired an interest in the homestead by which the same could not be divested except upon a contract to which she in person was a party. (See Sec. 3.)

This section put a limitation upon the class of contracts, which might sweep away her homestead rights, but it did not enlarge or increase the homestead right of George W. Frost.

Again, the contract with Redick did not contain any terms or conditions as to the homestead. There is in it no waiver of any homestead right. As against this contract George W. Frost was not forbidden to claim the lots as a homestead and therefore exempt from the obligations of this contract.

The language of both homestead laws plainly and clearly shows that the legislature in enacting them did not

have in mind that the law in force when a *contract was made* should govern as to such contract, but the law in force at the time of the *attachment, levy* or sale should govern.

The old law provided that the homestead "shall not be "subject to *Attachment, Levy or Sale upon Execution or other "process.*" * * * * * * *

The homestead law in force when the sale was made, provided in Section 1: "The homestead of every family whether owned by the husband or wife is exempt from judicial sale."

It will be seen that the language of both these laws relates only to the attachment or the sale.

If it had been the intention of the legislature to say that the law of 1877, should not apply to prior contracts it could have been easily so declared.

The legislature evidently intended, under the old homestead law, that the homestead should not be subject to attachment or sale thereafter made, regardless of when the contract may have been made, which may have been the basis of the judgment upon which the writ issued.

What reason is there, therefore, for declaring that the law of 1877 did not apply to the case in hand, unless the Court can say that there was something in the law of 1877 which impaired the obligation of the contract made between Redick and Frost.

THIRD POINT.

ABBY B. FROST NOT HAVING BEEN A PARTY TO THE SUIT OF REDICK vs. FROST, THE SALE OF THE HOMESTEAD WAS A NULLITY AND HER RIGHTS COULD NOT THEREFORE BE AFFECTED BY AN ORDER OF CONFIRMATION.

Revalk vs. Kraemer, 8 Cal., 73, was a suit to enjoin a sale under a mortgage foreclosure.

In the foreclosure suit the husband alone was made a party defendant and the Court said:

"The second point made by the counsel of the Defend-"ant is, that the action brought in the Twelfth District "Court for the foreclosure of the respondent's mortgage and "the decree made thereon, was a perfect bar to the present "action. The wife was no party to the action in the Dis-"trict Court and could not in any way be affected thereby, "*nor could the rights of the husband*, as to the homestead, be "affected by the proceedings in that case. *When the hus-"band appears alone and defends the suit, his right to the home-"stead is no more concluded by the decision than by his separate "execution of the deed or mortgage. Legal proceedings to be "conclusive against either must embrace both.*"

In Heartwell vs. McDonald, 69 Ill., 293, which was an action of ejectment, Plaintiff claimed title under an execution sale of the homestead of the Defendants, and the Court held:

"That a judgment was not a lien on the homestead "premises. * * * The property was not subject to a lien, "levy or forced sale while occupied as a homestead, and such "sale of it was held inoperative and void, and the purchaser "acquired no title thereunder."

THE HOMESTEAD RIGHTS OF NEITHER GEORGE W. FROST NOR ABBY B. FROST WERE CUT OFF BY THE ORDER OF CONFIRMATION FOR THE REASON THAT THE QUESTION OF HOMESTEAD COULD NOT BE DISPOSED OF BY SUCH A PROCEEDING.

It was held, in Cook vs. Klink, et al., 8 Cal, "That the homestead right could not be tried on a motion to set aside a sale under a mortgage, but the remedy of the husband and wife was by a cross-bill in the foreclosure suit or by bringing an action in ejectment for the property."

In Larson vs. Reynolds, 13 Iowa, 579, it was held "that while the wife was not a necessary party to the proceedings relating to homestead, she will not, when made a party, be estopped by a decree foreclosing a mortgage thereon executed by the husband alone; neither could she be ousted from the possession by a sale made under such a decree."

In Kraemer et al. vs. Revalk et al., 8 Cal., 75, it was held "that, unless both husband and wife were before the Court, no notice should have been taken as to the question of homestead."

In Mark et al. vs. Marsh, 9 Cal., 97, it was said:

"When the husband appears and defends alone, any decision the Court could make in regard to the homestead could not affect the rights of the wife, she not being a party to the suit. And such is the nature of the rule relating to the homestead that the rights of the husband cannot be affected without affecting those of the wife also. If no binding decision can be made when one of them only is a party, then it is idle for the Court to make any decision at all in such a case."

FROST AND WIFE HAD NO OPPORTUNITY TO PROVE THEIR HOMESTEAD INTEREST IN THIS PROPERTY AT THE TIME WHEN THE ORDER OF CONFIRMATION WAS MADE.

It is true that Frost, on the 10th day of September, 1878, filed exceptions to the sale.

The sale was made August 24, 1878, (p. 91) and on September 10, 1878, an order was made requiring Defendant Frost to show cause by next morning why the sale should not be confirmed (p. 93, folio 141).

On the same day exceptions were filed, stating among other things (p. 94, folio 141):

"That said lands constituted the homestead of Defend-"ant and not liable to sale."

An order was made referring the question of homestead to Watson B. Smith, clerk, to take proofs relating thereto within five days and the proofs so taken appear in the record (pp. 67-8,) and from which it appears that Frost and family *then were* and had been at Crow Indian Agency from about the time of the commencement of this suit.

It appears (p. 89, folio 136,) that it required a letter seventeen days by the usual course of mail to go from Omaha to the Crow Agency, and seventeen days to return, making thirty-four days for the round trip.

There was, therefore, neither time nor opportunity to notify Frost of this hearing or to take the testimony of himself and family on this homestead question in support of this exception to the sale. Likewise was Frost and family

in Montana from the commencement of this suit to the end of it.

He had no favorable opportunity to make defense on any question arising therein. These facts fully appear in his Petition for a new trial (pp. 87, 88, 89).

What kind of a hearing was this, therefore, on the homestead question? It might properly be called a *Legal Abortion.*

Is it upon this kind of a hearing that this Court will say the sacred right of a family homestead shall be bartered away?

But this is not all. Look at the supposed order which Complainant Spitley says cuts off, or adjudicated this homestead question (p. 94, folio 142).

CONFIRMATION OF SALE.

JOHN I. REDICK
vs.
GEORGE W. FROST.

"This cause coming on to be heard, upon motion of "Plaintiff, to confirm the sale made herein by the United "States Marshal on the 24th day of August, 1877, of lots 3 "and 4, in block 52, in the City of Omaha, to John I. Redick, "the Court, after hearing the arguments of counsel, and "being fully advised in the premises, do find the proceed-"ings in and about said sale in all respects regular and ac-"cording to law, and the said sale is, therefore, by the Court "in all respects ratified and confirmed, and Wm. Daily, "United States Marshal, is hereby ordered and directed to "execute and deliver to John I. Redick, the purchaser, a "deed of said premises in the usual form, and that the "Plaintiff have execution for balance due on judgment."

"To which order of the Court Defendant excepts."

There is not a word in this order about "*Homestead.*"

We have heretofore shown that this homestead question could not be adjudicated in this fashion. It is not a violent presumption to say that the judge confirming the sale held to the same opinion, and did not mean or intend to dispose of the homestead question by this order.

The Supreme Court of Nebraska held that an order of confirmation only relates to the regularity of the proceedings, but *does not* cut off equitable grounds for relief.

Taylor vs. Courtney, 15 Neb. 191.

We shall hereafter show that this order of confirmation relied on, is ineffective, as it confirms a sale made August 24, 1877, whereas the sale we are considering was made August 24, 1878.

G. W. FROST AND ABBY B. FROST MAY PROTECT THEIR HOMESTEAD RIGHT BY A CROSS-BILL.

Linton vs. Quimby, 57 Ill. 271, was quite like the case at bar. The husband and wife filed their cross-bill setting up their homestead rights as against the judicial sale and the bill was sustained.

In Abell vs. Lothrop, 47 Vt. 375, it was held:

That the wife of a married man has a right of occupancy in a homestead, and was properly joined with him in a bill to arrest proceedings which threatened such occupancy.

In Comstock vs. Comstock, 27 Mich. 97, it was held:

That the wife may bring suit by Bill in Equity to pro-

tect her homestead. In this case the land was covered by a mortgage executed by the husband alone. The wife brought an independent suit by bill to have set apart and preserved the homestead.

Action was held to have been properly brought.

In Flege vs. Garvey, 47 Cal. 371, which was an action of ejectment by a wife to recover the homestead, the Court held:

That the conveyance of the homestead must be signed by both husband and wife. In that case the husband became insane, and a guardian was appointed and sold the land by an order of the Probate Court, and it was held the wife could recover the homestead from the purchaser at the guardian's sale.

FOURTH POINT.

THE INTEREST OF FROST IN THE LANDS IN CONTROVERSY AT THE TIME OF THE LEVY OF THE ATTACHMENT AND AT THE TIME OF THE SALE WAS AN EQUITABLE INTEREST ONLY, AND WAS NOT SUBJECT TO EXECUTION SALE UNDER THE LAWS OF NEBRASKA, WHEREBY SAID SALE WAS VOID AND THE PURCHASER ACQUIRED NO TITLE THEREUNDER.

At the time of the levy of the writ of attachment and at the time of the sale, the title of Frost in the property

was measured and determined by the decree in the case of Frost vs. Durant et al. (P. 146–7.)

The $302.11 provided for in that decree (p. 147) had not been paid into Court, and Mr. Frost had not obtained a deed for the property.

Under the laws of Nebraska such an equitable interest in land is not subject to attachment or execution sale.

Compiled Statutes of Nebraska, 1885, p. 654, Sec. 201:

"The order of attachment shall be directed and deliv-"ered to the sheriff. It shall require him to attach the "lands, tenements, goods, chattels, stocks, or interests in "stocks, rights, credits, moneys and effects of the Defendant "in his county not exempt by law from being applied "to the payment of the Plaintiff's claim, or so much thereof "as will satisfy the Plaintiff's claim, to be stated in the "order as in the affidavit and the probable costs of the "action, not exceeding fifty dollars."

Compiled Statutes, 1885, p. 688, Sec. 476:

"Lands, tenements, goods and chattels, not exempt by "law, shall be subject to the payment of debts, and shall "be liable to be taken on execution and sold as hereinafter "provided."

Compiled Statutes, 1885, p. 690, Sec. 485:

"The officer to whom a writ of execution is delivered shall proceed immediately to levy the same upon the goods and chattels of the debtor; but, if no goods and chattels can be found, the officer shall endorse on the writ of execution 'no goods,' and forthwith levy the writ of execution upon the lands and tenements of the debtor which may be liable to satisfy the judgment."

There is no statutory provision in Nebraska by which an equitable interest in lands can be either attached or levied upon, or sold at execution sale.

The Supreme Court of Nebraska, in Frasher vs. Ingham, 4th Nebraska, 431, said: "But only real estate to which the "debtor has the legal title can be sold on execution."

Allen vs. Sanders, 2 Bibb., 94, was a case quite in point. Wood, the original owner of an equitable title, had given a bond to Allen, the Plaintiff, for the conveyance of the property.

This equitable interest of Wood, however, had been levied upon and sold at an execution sale, and Sanders had become the purchaser. The question was whether Allen was entitled to a conveyance of this property as against the title of Sanders, the purchaser at execution sale. The Court *held* that Sanders acquired no title by such purchase at execution sale.

The Court said: "With respect to the sale under execu- "tion, it was decided by this Court, in the case of Thomas "vs. Marshall Hood 19, and recognized in the case of Bu- "ford vs. Buford (Vol. 1, 306), that a mere equitable in- "terest in land is not subject to execution; but Wood had "only an equitable interest in the lot; therefore it could not "be sold under a *fieri facias* against his estate, and the sale "must be deemed void."

Disborough vs. Outcalt et al., 1 N. J., Eq. 298, perhaps is more precisely in point.

In that case Disborough claimed title as a purchaser at an execution sale of an equitable interest of Defendant

Outcalt in certain lands. Outcalt was in possession of the property just as Frost was in possession in the case at bar.

Disborough brought an action to quiet the title and the Court *held* that the bill to quiet title could not be maintained for the reason that Disborough acquired no title by such execution sale.

The Court said: "The right of Outcalt rested merely "in equity. He had never paid off the incumbrances, and "thereby placed himself in a situation to demand a title at "the hands of Pierson. * * * * considering the in- "terest of Outcalt as simply an equitable interest, it could "not be legally operated upon by the judgment, levy or "sale. I take the principle to be settled, that a law, a judg- "ment and execution constitute no lien on mere equitable "rights. * * * * (Quotes statute quite like Neb.) "Judgments and executions operate on legal estates only. "There must be a seizin, and this term always has reference "to a legal title.

"The decisions in equity on this subject are in accord- "ance with those of law. They consider the rights grow- "ing out of a judgment and execution at law as legal "rights, and while this Court will on various principles of "equity aid the Courts of common law in the prosecution "of legal rights, it will not undertake to enlarge or extend "them."

Bogart vs. Perry, 1 Johns. Ch. 55, was an action in which a bill was filed to enforce and perfect a title acquired under an execution sale of an equitable interest in lands.

The Court said: "A judgment at law is not a lien "upon a mere equitable interest in lands and the execution "under it will not pass an interest which a Court of Law "can enforce and protect."

The bill was dismissed.

In Hendricks vs. Robertson, 2 Johns, Chap. 312, Chancellor Kent said: "I do not know of any case in which a "Court of Equity has considered an execution at law as "binding an equitable right. The idea is altogether inad- "missible. If the execution cannot sell there is no reason "why it should affect or bind a mere equity, and the doc- "trine would be equally inconvenient and absurd."

O'Roads vs. Symmes et. al., 1 Ohio, 140, is quite in point. That was a case where the purchaser at a sheriff's sale brought a bill to quiet title to the property so purchased.

The Court said: "The liability of equitable interests in "lands to be seized and sold upon execution as land, has "never been recognized by this Court, as existing either un- "der the Territorial or State governments. That it cannot "now be so seized and sold is settled both by judicial "determination and legislative enactment."

Approved in Jackman vs. Hallock, 1, Ohio 147. We refer also to the following cases:

Lennox vs. Notrebe, Hempst. 251.
Thompson vs. Harper, 2, Jones Eq. 475.
Wilson vs. Beard, 19 Ala. 629.
Hopkins vs. Crary, 23 Miss. 54.
Smith vs. Hueson, 4 Heisk. 250.

FIFTH POINT.

THE INTEREST OF FROST IN THE PREMISES WAS AN EQUITABLE INTEREST, SUCH AS ONE IN POSSESSION HAS UNDER A CONTRACT OF PURCHASE, HAVING PAID PART OF THE PURCHASE MONEY AND NOT SUBJECT TO EXECUTION SALE, AND THE PURCHASER ACQUIRED NO TITLE AT SUCH SALE.

The writ of attachment in the case of Redick vs. Frost (p. 79 Record), commanded the Marshal to attach the lands, tenements, goods, chattels, etc. The return of the Marshal on the writ of attachment shows (p. 79 of Record), that the officer attached lots three and four (3 and 4) in block fifty-two (52). The return of the Marshal also shows (pp. 79 and 80, folio 123) that the officer appraised the lots at $6,000. Here was an appraisement of the full value of the lands. The lands therefore were attached and not the interest of Frost in the property.

When the order of sale was issued in this attachment proceeding (p. 90, folio 137), the Marshal proceeded to appraise the property as required by the laws of Nebraska, but did not appraise the lots at their value in money, but appraised simply the interest of Frost in the property at $500. (P. 92 Record.)

The appraisement further reads: "Said Defendant's "only interest in said property, as appears by the records "of Douglas county, Nebraska, being that of *occupancy and* "*possession*, we appraise the said interests as above," to wit, at $500. (P. 92.)

It will be seen from this record that the attachment was levied upon the lots, and the Marshal did not proceed to sell the lots levied on, but appraised for the purposes of sale simply the interest of Frost in the lots, to wit, the "mere right of occupancy and possession."

It appears by the Marshal's report of sale (P. 91 Record) that the two lots were sold to John I. Redick for $350; in other words, the Marshal sold simply the *right of possession and occupancy* to John I. Redick for $350, while the lands which had been attached and ordered sold had been appraised at $6,000.

The actual relation which Frost sustained to this property was that of a purchaser of property who had paid all of the purchase money except $302.11. (See Bill of Complaint, p. 2, fol. 3; also the decree in the case of Frost vs the Union Pacific Railroad Company et al., p. 146, fol. 219.)

It is clear, therefore, that the interest of Frost was more than a mere right of possession, but an actual interest as a purchaser, accompanied with possession.

This, however, was not the interest which was sold at the execution sale; but suppose it was—then the purchaser at such execution sale would not acquire any title.

In Griffin vs. Spencer (6 Hill. 525,) the Plaintiff who claimed title by virtue of an execution sale against the Defendant, brought his action in ejectment against the Defendant in possession.

It appeared that the Defendant was in possession under a contract to purchase the land, and the Court held that

this execution sale was unauthorized and the Plaintiff had no title by which he could maintain his action in ejectment.

Bogart vs. Perry et al., 17 Johns, 351, was a bill filed by a purchaser at an execution sale to quiet the title to the property. The execution debtor was in possession of the property under a contract of purchase, but had not paid all of the purchase money, and the Court *held* that the judgment debtor had only a mere equitable interest in the land upon which a judgment at law was not a lien, and which could not be sold on execution, and the bill to quiet title was dismissed.

Talbot vs. Chamberlain 3 Paige, p. 219, was an action brought by a purchaser at an execution sale of an equitable interest in lands, by enjoining the judgment debtor, who was in possession, from committing waste.

The Court said the interest of the person in possession of land under a subsisting contract for the purchase thereof, cannot be sold under an execution at law; but in all other cases, the bare possession of the Defendant in the execution, although it be a mere tenancy at will, or on sufferance, or a possession without color or right, is such an interest as may be sold on the execution.

This case, as well as the case of Griffin vs. Spencer, 6 Hill. 525, mark the true line of distinction.

If, therefore, Frost had a mere *right of possession and occupancy* to the property, such right of possession and occupancy may have been subject to sale, but we have seen by the decree of the State Court in the case of Frost vs. Durant et al., (p. 146 record) that Frost had an *equitable title as a*

purchaser coupled with possession, which was not subject to sale, and by which sale, therefore, Redick acquired no title whatever.

Real estate held in such a manner forms an exception to the general rule that the interest of a defendant in lands of which he is in possession may be sold on execution against him. See also the following cases:

Barton vs. Bank of Olean, 2 Barbour, Chap. 458.
Disborough vs. Outcalt, 1 N. J., Eq. 298.
Delafield vs Anderson, 15 Miss., 630.
Ellis vs. Ward, 15 Miss., 651.
Melton vs. Davidson, 6 Ired., Eq., 194.

From the two foregoing paragraphs of this brief and from the cases therein cited it will be seen where an attempt has been made to sell such equitable interest of a judgment debtor that the purchaser acquires no title to the lands; that he can *neither maintain a bill to quiet title in himself*, neither can he maintain ejectment to recover possession of the property.

It is not a case of irregularity of the sale, which might be cured by an order of confirmation.

This question seems never to have been considered by the Circuit Judge in the opinions rendered by him (p. 231 to 233 and p. 252 to 258 of Record).

THE MARSHAL HAD NO POWER OR AUTHORITY TO LEVY UPON OR TO SELL THE MERE RIGHT OF OCCUPANCY AND POSSESSION.

The order of attachment directed (p. 79, folio 122) the

Marshal to attach the lands and tenements and not a mere a right of occupancy and possession.

The order of sale (p. 90, folio 137) was not an order to sell the right of possession and occupancy.

There was no authority to issue an order of sale except an order directing the Marshal to sell the property attached or some portion thereof.

The Marshal never had in his possession any writ authorizing him to sell the mere right of possession. This proceeding, therefore, in this sale, was wholly without any pretense of authority.

SIXTH POINT.

COMPLAINANT'S BILL TO QUIET TITLE WILL NOT LIE BECAUSE UNDER THE ORDER OF SALE REDICK ACQUIRED NO TITLE TO THE LANDS BUT ONLY A RIGHT OF POSSESSION AND OCCUPANCY, WHICH IS INSUFFICIENT TO SUSTAIN A BILL TO QUIET TITLE.

If at the time of the sale of the lands under the order of sale, to Redick, the Defendant Frost had an equitable title to the property, then he had more than a mere right of possession and occupancy as found in the appraisement (p. 92 and p. 110) and which was sold to Redick, according to the report of sale (p. 91 of record).

If, however, the interest of Frost in the property was a mere right of "possession and occupancy" alone, and that

was all that was sold to Redick, then Redick and his grantee, the Complainant Spitley, only acquired a right of possession and occupancy to the premises in controversy.

If having acquired only the right of possession and occupancy, how can the Complainant maintain a bill to quiet title? He never acquired any title to the property neither legal or equitable.

If he was only entitled to possession and occupancy his remedy would be either by ejectment or forcible entry and detainer.

A demurrer was filed to the bill of Complainant (p. 8 folio 13) which should have been sustained by the Court, as the Complainant had adequate remedy at law.

This question seems not to have been considered by the Circuit Judge in his opinions.

In McCormick vs. Harvey (9 Watts, 482), which was an action in ejectment, the Court held:

"That the levy and sale of the undivided moiety of a "tract of land will vest that amount of interest only in the "purchaser, although at the time of the levy and sale the "Defendant in the execution was the owner of the whole es-"tate."

See also Carpenter vs. Cameron, 7 Watts, 51.

This Court has said, in Fussell vs. Gregg, 113 U. S., 555:

"This decision is in point, and shows the bill to be with-"out equity as to those of the Defendants who are in pos-"session. Their possession is good against all the world ex-"cept the true owner. As the bill asserts no equity against "them, they have the right to stand on their possession un-

"til compelled to yield to the true title, and to demand a trial "by jury of the question whether the Plaintiff has the true "title. The Plaintiff cannot deprive them of that right by "neglecting to acquire the legal title, and, upon the ground "of her equitable title, ask the aid of a Court of Equity. "She can turn the Defendants out of possession only upon "the strength of the legal title, which she must first acquire. "Having done this, a court of law is the proper forum in "which to bring her suit."

Hipp vs. Babin, 19 How., 271.
Park vs. Winnipiseogee Manufacturing Co., 2 Black, 545.
Grand Chute vs. Winegar, 15 Wall., 373.
Lewis vs. Cocks, 3 2Wall., 466.
Killian vs. Ebbinghaus, 110 U. S., 568.

We suggested in a former part of this brief that the demurrer should have been sustained to the Bill of Complaint of Martin Spitley, for the reason that his remedy was at law by ejectment.

It is now made clear by the entire record that the only interest which Redick, the grantor of the Complainant Spitley, acquired in this property by the judicial sale was a mere right of occupancy and possession. As that was *all* that was sold, it was, therefore, *all* that Redick bought, and was therefore the true measure of his interest in the property.

Mr. Spitley, the Complainant, therefore has no interest in this property except a mere right of *occupancy and possession*.

This cannot be made the basis of a Bill to quiet title for the reason that he has no title to be quieted.

SEVENTH POINT.

THE ORDER OF SALE WAS A NULLITY FOR THAT IT DID NOT ORDER A SALE OF THE LANDS AND TENEMENTS ATTACHED, BUT ORDERED A SALE OF JUDGMENT AND COSTS.

The Master found (p. 55, fol. 87) that the order of sale issued to the Marshal in the case in this Court of Redick vs. Frost was lost, and the copy in the complete record, which was introduced in evidence, reads as follows: "*The Marshal to sell the judgment and costs.*"

It will be observed that the Master does not find that there was any mistake in this complete record introduced in evidence. As a matter of fact there was no evidence introduced tending to show the existence of any mistake in this complete record.

The order of sale (p. 90, fol. 137) reads as follows:

"You are, therefore, commanded to proceed as upon execution, and advertise and *sell so much of the judgment and costs* with interest thereon, etc."

This was the writ which went into the hands of the Marshal, and was the only authority which the Marshal had to proceed to appraise these lands or to sell the same or any interest of Frost therein.

The Plaintiff in order to maintain his title arising out of such judicial sale was required to show as one of the muniments of title the existence of a valid execution.

Weyland vs. Tipton, 5 Ser. & R. 332, was a case where a

purchaser at an execution sale brought an action in ejectment and offered in evidence his sheriff's deed.

The Court said: "The point is too clear for argument. It has often been decided that the recitals in a sheriff's deed are no evidence of his authority to sell, but the judgment and execution must also be produced."

In Hampton vs. Speckenagle, 9 Ser. & R. 212, it was *held*, that a party in making out his title cannot give in evidence a sheriff's deed without showing the judgment and execution.

The Court said: "A sheriff's deed conveys no title unless the sheriff was authorized to sell, and his authority can be proved in no other manner than by showing the judgment and the subsequent process of execution and *venditioni exponas*. A deed by which nothing passes is not evidence." See also:

Burkhalter vs. Edwards, 16 Ga., 593.
Garson vs. Doe, 14 Miss., 111.

EIGHTH POINT.

THIS JUDICIAL SALE WAS VOID BECAUSE THERE WAS NO APPRAISEMENT AS REQUIRED BY LAW.

The Master in his report did not make any finding of the facts relating to the appraisement of the property by the Marshal.

Frost and wife excepted to the Master's report as follows (p. 210, folio 310 and 311): "The said Master failed to find

the facts as to the appraisement had under the order of sale, whereas he should have found that at said time said lots 3 and 4 in block 52, in the City of Omaha, were of the value of $6,000; yet the said Marshal and the appraisers by him selected did not appraise said lots at their value in money and deduct from the real value of the lots and tenements the amount of all liens and incumbrances, for taxes or otherwise, which may have been a prior lien thereon, and specifically enumerate such liens to ascertain the real value of the interest of George W. Frost therein, but that said appraisement is as follows:

APPRAISEMET.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

John I. Redick
vs.
George W. Frost.

"The undersigned, William Daily, Marshal of the "United States for the District of Nebraska, by Ellis L. "Bierbower, Deputy, and John Campbell and John B. "Furray, two disinterested freeholders, residents of Douglas "county, State and District of Nebraska, the said freehold- "ers being duly sworn by said Marshal to make a true and "impartial appraisement of the Defendant's interest in the "following property ordered to be sold by virtue of an "order for sale on attachment issued out of the Circuit "Court of the United States in the above entitled case, and "wherein John I. Redick is Plaintiff and George W. Frost is "Defendant, do upon our oaths, appraise said property at "its real value in money, after deducting all prior liens "thereon, to wit:

OMAHA, DOUGLAS COUNTY, NEBRASKA.

"Lot 3, in block 52	$ 50 00
"Lot 4, in block 52	450 00
Total	$500 00

"(The said Defendant's only interest in said property, as appears by the records of Douglas County, Nebraska, being that of occupancy and possession, we appraise the said interest as above.)

Given under our hands this 20th day of July, 1878.

WILLIAM DAILY,
Marshal of the United States for the District of Nebraska.

"By ELLIS L. BIERBOWER, Deputy,
"JOHN CAMPBELL,
"JOHN B. FURRAY."

The Circuit Judge failed to consider this question in his opinion, otherwise perhaps than having considered the same disposed of by an order confirming the sale.

It is true that Frost filed exceptions to the sale (p. 93, folio 141) and after the sale had been confirmed filed another motion to vacate the order confirming the sale (p. 94, 95).

If the question relating to the appraisement were a mere irregularity we are willing to admit that a proper order of confirmation of the sale cured them, but if the fault of the appraisement was jurisdictional, then the same was not cured by order of confirmation.

Let us see what the law of Nebraska was at that time and what the facts were.

Compiled Statutes 1885, p. 691-2, Sec. 491 a., down to and including Sec. 491 c.:

"Whenever, hereafter, execution shall be levied on any "lands and tenements, the officer levying the same shall call "an inquest of two disinterested freeholders, who shall be "residents of the county where the lands taken on execu- "tion are situated, and administer to them an oath impar- "tially to appraise the interest of the person or persons, or "corporation, against whom the execution is levied, in the "property so levied upon; and such officer, together with "said freeholders, shall appraise said interest at its real value "in money, and such appraisement shall be signed by such "officer and said freeholders, respectively. (1875, 60.)

Sec. 491 b. "That, for the purpose of the appraisement "mentioned in the last preceding section, the officer and "freeholders therein named shall deduct from the real value "of the lands and tenements levied on the amount of all "liens and incumbrances, for taxes or otherwise, prior to the "lien of the judgment under which execution is levied, and "to be determined as hereinafter provided, and which liens "and incumbrances shall be specifically enumerated; and "the sum thereafter remaining shall be the real value of the "interest therein of the person or persons, or corporation, "against whom or which the execution is levied.

Sec. 491, c. "It shall be the duty of the County Clerk, "the Clerk of District Court, and the County Treasurer of "the county wherein such levy is made, for the purpose of "ascertaining the amount of the liens and incumbrances "upon the lands and tenements so levied upon, on applica- "tion of the Sheriff, in writing, holding such execution, to "certify to said Sheriff, under their respective hands and of- "cial seals, the amount and character of all liens existing "against the lands and tenements levied on, and which are "prior to the lien of such levy, as the said liens appear of "record in their respective offices. For which certificate,

"and the necessary search therefor, said officer shall receive "a fee of two dollars ($2) each, to be paid by the Plaintiff "in the execution, and taxed as increased costs in the action "in which the judgment, on which execution was issued, was "rendered."

It will be observed that the first section quoted requires the appraisers to appraise the interest of the debtor in the property.

By the next section it will be observed that this interest is ascertained by *first* ascertaining the *real value of the lands* and then *deducting therefrom all liens and incumbrances*, and that in such appraisement the liens and incumbrances so deducted shall be *specifically enumerated* and that the sum *thereafter remaining* shall be the real value of the interest of the judgment debtor.

By the last section quoted these liens are determined by procuring certificates from the County Clerk, the Clerk of the Distrist Court and the County Treasurer.

When the Marshal made application to these respective officers for reports and received from the Clerk of the Court a copy of the decree in the case of Redick vs. Durant and others (p. 108, folio 163) and from the County Treasurer a statement of the outstanding tax deeds (p. 109), but in his appraisment (p. 110, folio 165) there is no appraisment of the lands at their real value and the deducting therefrom of the specific liens, if any, to ascertain the interest of Frost in the lands.

These sections of the Nebraska law were construed in Rosenfield vs. Chada, 10 Nebraska, 421.

The opinion of the Court was as follows:

"In February, 1878, an action was commenced in the "District Court of Saline County by the Plaintiffs against "the Defendant, and lot 11, in block 143, in the city of "Crete was attached as his property. In April of that year "judgment was rendered against him for the sum of "$224.05, and an order made for the sale of the attached "property. In January, 1879, an order of sale was issued "on said judgment and delivered to the sheriff of said "county, who thereupon caused the following appraisement "to be made:

"THE STATE OF NEBRASKA, }
SALINE COUNTY. }

"We, Jacob Bigler, Sheriff of Saline county, and H. C. "Rider and J. C. McDonald, having been first sworn by "said sheriff, do upon actual view thereof, appraise the "property hereinafter described at its real money value, as "the property of Mathias Chada, taken by virtue of an "order of sale issued out of the District Court of the First "Judicial District of Nebraska, in and for the county of "Saline, wherein Joseph Rosenfeld and Mayer Rosenfeld "are Plaintiffs and the said Mathias Chada is Defendant, "to wit: lot No. 11, in block 143, in the city of Crete, Saline "County, Nebraska. The interest of Mathias Chada valued "at the sum of $200.

"Given under our hands this twenty-third day of Jan- "uary, 1879.

"JACOB BIGLER, Sheriff,
"H. C. RIDER,
"J. C. MCDONALD."

"The lot in question was sold to the Plaintiffs for the "sum of $134. The Defendant filed a motion to set the "sale aside, which was sustained. The Plaintiffs bring the "cause into this Court by petition in error. The several "errors assigned are substantially the same, viz.: that the

"Court erred in sustaining objections to the sale, and that "said objections should have been overruled.

"In the case of Sessions vs. Irwin, 8 Neb., 7, the interest "of the Defendant in certain real estate was valued at $10. "It was held that the appraisers must specifically enumer- "ate the liens and incumbrances which they find subsist- "ing. This can only be done by ascertaining the gross "value. If this mode of ascertaining the value is not ad- "hered to, it will be next to impossible to review an erron- "eous appraisement, and the debtor's property is liable to be "sacrificed. The judgment of the District Court is clearly "right and is affirmed.

"Judgment affirmed."

It appears from the certificate of the County Treasurer (p. 109 record) that there were a great many outstanding tax deeds against this property. Either the Marshal and his Appraisers deducted these tax deeds in order to determine the interest of Frost in the property or else deducted no liens at all.

In any event the appraisement was equally bad.

Under the law of Nebraska tax deeds are not treated as liens and the Appraisers had no right to take the same into consideration.

Sessions vs. Irwin, 8 Neb., p. 5, the Court said:

"In May, 1877, Milan H. Sessions recovered a judgment "against the Defendants for the sum of $350, and costs taxed "at $41.38. An execution was issued on the judgment in "June of that year, which was levied upon the northeast "quarter of the southeast quarter, of section twenty-four, in "township ten, north, of range six, east of the sixth princi- "pal meridian, in Lancaster County. The interest of the

"Defendants in said real estate was appraised at the sum of "ten dollars, and was purchased by Curson for the sum of "$30. The sale was reported to the Court, and on the "second day of October, 1877, an order made to show cause "by the ninth day of that month why the sale should not "be confirmed. On the tenth day of October, no objection "on the part of the Defendants having been made to the con- "firmation of the sale, it was confirmed, and a deed for the "premises executed by the Sheriff to the purchaser. On the "next day the Defendants filed a motion to set the confir- "mation and sale aside. The motion appears to have been "sustained, but no formal order was entered on the records "of the Court until March, 1878, when an order was entered "on the records vacating the order of confirmation and set- "ting the sale aside, to which the Plaintiff excepted, and "now brings the cause into this Court by petition in error.

"In appraising the property, the Appraisers fixed the "value at $2,200, and found as prior incumbrances as fol- "lows:

"Taxes as per County Treasurer's certificate.....$———
"Tax deeds as per County Clerk's certificate..... ———
"Mechanic's lien as per County Clerk's certificate.... ———
"Prior judgments as per District Court Clerk's certi-
ficate..... ———

"Total incumberances.....$———

"The interest of the Defendants was valued at $10.

"The certificate of the County Clerk shows a tax deed to "N. C. Brock for said premises dated June 12, 1877, also tax "deed to Brock dated December 15, 1871.

"It also appears from a certificate of the County Treas- "urer that certain taxes were due upon the premises in "question.

"The act passed in 1875 'for the more equitable ap- "praisement of real property under judicial sale,' pro-

"vides: 'That for the purpose of appraisement the officer "and the freeholders therein named shall deduct from the "real value of the lands and tenements levied on the "amount of all liens and encumbrances, for taxes or other- "wise, prior to the lien of the judgment under which the "execution is levied, and to be determined as hereinafter "provided, and which liens and incumbrances shall be "specifically enumerated, and the sum thereafter remaining "shall be the real value of the interest therein of the per- "son or corporations against whom or which the execution "is levied.'

"Laws 1875, p. 60, Sec. 3 of the Acts provides that: "It shall be the duty of the County Clerk, the Clerk of the "District Court and the County Treasurer of the County "wherein such levy is made, for the purpose of ascertain- "ing the amount of the liens and incumbrances upon the "lands and tenements so levied upon, upon application "of the Sheriff in writing, holding such execution, to cer- "tify to said Sheriff under their respective hands and "official seals, the amount and character of all liens exist- "ing against the lands and tenements levied upon, and "which are prior to the lien of such levy, as the said liens "appear of record in their respective offices."

An "incumbrance" is defined to be "any right to, or interest in, land which may subsist in third persons, to the diminution in value of the estate of the tenant, but consistent with the passing of the fee." (2 Greenleaf Ev. Sec. 242, 1 Bouvier Law Diet. 596; Scott vs. Twiss, 4 Neb. 133.

A "lien" is defined to be "a hold or claim which one person has upon the property of another as a security for some debt or charge." (2 Bouvier Law Dict. 47.)

"The object of an appraisement law is to prevent a sale "of the debtor's real property at a sum altogether dispropor-

"tionate to its real value. Contracts are made with refer-
"ence to this provision of the statute, and the creditor is
"aware at the time an obligation is incurred, that if he is
"compelled to invoke the aid of the Court to enforce his de-
"mand against the debtor, that the interest of the debtor in
"the real estate levied upon must bring at leat two-thirds of
"its appraised value. And the inconvenience and delay to
"which the creditor may be subjected in consequence of
"such appraisement are but slight compared with the inju-
"ries which may be sustained by the debtor in the sacrifice
"of his property in the absence of an appraisement law.
"The appraisers are to appraise the interest of the debtor
"at 'its real value in money.' How is this to be done? In
"making the appraisement the appraisers' act judicially.
"The certificates furnished by the county clerk, clerk of the
"District Court, and county treasurer are not conclusive
"evidence of the facts which they purport to establish. A
"mortgage upon the lands in question may appear unsatisfied
"upon the record; yet the entire amount due thereon may
"have been paid. So in regard to other liens and incum-
"brances. It is the duty of the appraisers to endeavor to
"ascertain the *actual amount due* upon such liens and in-
"cumbrances, and they must *specifically enumerate* the liens
"and incumbrances which they find subsisting.

"Tax deeds are not liens or incumbrances within the
"meaning of the statute. A party claiming title under a
"tax deed holds adversely, and for the time being at least
"must rely upon his title.

"The statute provides that in cases where there has
"been a valid assessment, if the title fails the holder may
"have a lien upon the real estate, but this is a mere possi-
"bility and cannot be considered by the appraisers, as the
"validity of a tax deed must be determined by a Court and
"not by appraisers. In the case at bar the property was
"appraised at $2,000. No liens or incumbrances are found
"by the appraisers to exist against the land. The property

"therefore should have sold for at least two-thirds of its "appraised value. As it failed to sell for that sum the "Court did its duty by setting the sale and confirmation "aside. The judgment of the District Court is therefore "affirmed.

"Judgment affirmed."

It will be seen in the case of Redick against Frost (p. 72, folio 112) that Redick states the value of the lots to be $12,000.

When the writ of attachment was levied the two lots were appraised at $6,000. (P. 80, folio 123.)

O. F. DAVIS was examined as a witness before the Master in this case, and fixed the value of the property at $6,000. (P. 129.) BYRON REED, another real estate agent examined before the Master, put the value at $7,000. (P. 139, folio 209.)

We have in this record a case where the lots were worth at least the sum of $6,000, having been appraised by the Marshal for the purposes of sale at $500, and sold to the purchaser, Redick, for $350. (P. 91, folio 129.)

In other words, by this unlawful and wrongful appraisement, property worth from $6,000 to $7,000 was swept away for the mere pittance of $350.

The question is, will this Court sanction such an inequitable and unconscionable proceeding?

This Court has held, in Graffam v. Burgess, 117 U. S. 180, that great inadequacy of price at a judicial sale of real estate requires only slight circumstances of unfairness in

the conduct of the party benefited by the sale to raise the presumption of fraud. If the inadequacy of the price paid for the purchase of real estate at a sale on an execution be so gross as to shock the conscience the sale will be regarded as fraudulent and void.

The Court said:

"From the cases here cited we may draw the general "conclusion that, if the inadequacy of price is so gross as "to shock the conscience, or if in addition to gross inad- "equacy, the purchaser has been guilty of any unfairness, "or has taken any undue advantage, or if the owner of the "property or party interested in it, has been for any other "reason misled or surprised, then the sale will be regarded "as fraudulent and void, or the party injured will be per- "mitted to redeem the property sold. Great inadequacy "requires only slight circumstances of unfairness in the con- "duct of the party benefited to raise the presumption of "fraud."

I simply suggest to your Honors the inquiry, whether or no this peculiar and remarkable appraisement was not made at the suggestion and instance of Redick, the execution purchaser, to allow him to absorb the entire property in payment of a mere pittance of his attorney fee, and then still have the greater portion of that attorney's fee hanging over the head of Mr. Frost as a judgment to take away and absorb any other property that he might thereafter acquire.

Is this not a case where the price paid at this execution sale was so grossly inadequate as to shock the conscience and to justify this Court in declaring that sale to be void?

THE SALE OF THESE LANDS TO REDICK BY THE MARSHAL VOID BY REASON OF THE WANT OF PROPER APPRAISEMENT, AND REDICK ACQUIRED NO TITLE.

In McGregor vs. Williams et al., 10 Cush. 526, the "Court said: "If the appraisers over-estimate the amount "due on a mortgage, they necessarily diminish the value of "the debtor's interest in the estate, which is to be taken on "the execution. The greater they find the incumbrance to "be on the estate, the more of it will be necessary to set off "to satisfy the execution. The effect, therefore, of a levy, "when the amount of a debt due on a mortgage is over-"estimated, is to transfer to the judgment creditor more of the "estate than he is justly entitled to, and the judgment debtor "or those having his estate in the premises are thereby de-"prived of the true value of the estate to the extent of the "over-estimate of the incumbrance. * * * * The "result is that the tenants claiming under a title acquired "by statute have failed to show a valid levy in compliance "therewith, and cannot therefore hold the premises as "against the Defendant."

In Metcalf vs. Gillett et al., 5 Conn. 400, the Plaintiff claimed title by virtue of levy of execution, and the Court held "Title to real estate by levy of execution, being founded exclusively on the positive provisions of a statute, those provisions must be strictly pursued.

"Under the Revised Statutes it is undispensably necessary that the appraisement be in writing, signed by the appraisers and delivered to the officer before the property is set off."

In Mitchell vs. Kirtland, 7 Conn. 228, which was an "action in ejectment, the Court said: "The acquisition of

"title by execution is a proceeding *in invitum*. The re-
"quisites of its validity are prescribed by positive law. It
"is a derogation of the common law and *stricti juris*. An
"omission, therefore, of a statute requisite is fatal." * *

In Chapman vs. Griffin, 1 Root, 196, the Plaintiff's title was by execution; all the appraisers were agreed upon by the creditor and debtor, but one of them did not belong to the town where the land lay. But the Court said: "The "statute is express that the land shall be appraised by free-"holders of the same town, and the agreement of the par-"ties cannot alter the law."

The statutory law of Iowa provides, as in Nebraska, that lands shall not be sold at execution sale for less than two-thirds of their appraised value.

In the case of Sprott vs. Ried, 3 G. Greene, 497, which was an action in ejectment by the purchaser at an execution sale, the Court said: "The statute inhibits the Sheriff "from selling property at *less than two-thirds of its appraised* "*value*. That is made an *express condition*, upon which "*depended the powers of the Sheriff* to sell. This valuation "clause was enacted to protect execution debtors from a ruin-"ous sacrifice of property. It would be subversion of that "intention and an outrage upon the rights of such defend-"ants to decide that it was not necessary to sell the property "agreeable to the valuation required by law. *That this mat-"ter of valuation under such a law is not merely directory*, but "a *question of power* on which depended the *validity of the* "*sale*, is abundantly shown by the authorities."

In Evans vs. Ashby et al., 22 Ind., 15, which was an action by a purchaser of land at a Sheriff's sale to recover the possession thereof, it was held "that where the law re-

"quires a Sheriff to appraise property, taken on execution "sale without appraisement, is a nullity."

The same ruling was followed in

Fletcher vs. Holmes, 25 Ind. 458.
Tyler vs. Wilkinson, 27 Ind. 450.

Brown vs. Butters, 40 Iowa, 544, was a Bill in Equity by a judgment debtor to set aside a sale of his land in a case where the sale had been made on an execution for less than two-thirds of its appraised value, exclusive of liens and incumbrances, and the Court held that such execution sale was void.

NINTH POINT.

SUPPOSE IT TO BE TRUE THAT AN ORDER OF CONFIRMATION BY THE COURT WILL CURE ALL THE IRREGULARITIES IN SUCH SALE THAT WE HAVE COMPLAINED OF, STILL THERE WAS NO SUFFICIENT CONFIRMATION IN THE PRESENT CASE. THE RECORD SHOWS THAT THE SALE CONFIRMED WAS A SALE MADE THE YEAR PREVIOUS TO THE SALE IN CONTROVERSY.

The return of the report of the Marshal as to the sale (p. 91) shows that he made the sale on the 24th day of August, 1878.

The order of confirmation relied on by the complainant (p. 94, folio 152) reads: "This case coming on to be heard

"upon motion of the Plaintiff to confirm the sale made "herein by the United States Marshal on the 24th day of "August, 1877, of lots 3 and 4, in block 52, in the City "Omaha, to John I. Redick," etc.

Now it will be seen that the order of confirmation relied on was an order confirming *a sale made in* 1877.

The Plaintiff based his title upon a sale made *August* 24, 1878, to wit, *one year after* the sale which was confirmed. There is no other order of confirmation in the record.

There is nothing in the record to show that there is any mistake in this report of sale or in the order of confirmation.

We contend, therefore, that there was no order of confirmation to cure the defects complained of.

The case of Northrop vs. Devore, 11 Ohio, 359, decides this identical question. In that case a sale had been made on the 10th of November, 1824. The order of confirmation was of a sale made on the 10th, 11th, 12th, of December, 1824.

The Court said:

"Although it is argued that no other sale was made, ex- "cept that on the 10th, of November, and the time is probably "misdescribed through the inadvertence of the Clerk, yet as "the order stands, it affords no evidence that the sale of "November was ever acted upon by the Court."

TENTH POINT.

REDICK, THE PURCHASER, AT THE EXECUTION SALE ACQUIRED NO TITLE BECAUSE THE INTEREST SOLD, TO WIT, "POSSESSION AND OCCUPANCY," WAS LESS THAN FROST'S REAL INTEREST IN THE PROPERTY.

In Tufts vs. Hayes, 31 N. H. 138, an attachment was levied upon an equity of redemption of the debtor, but before the attachment had been entered the debtor discharged the mortgage upon his land.

The execution Plaintiff proceeded to sell simply the equity of redemption, and the Court held: "That the same was a nullity and passed no title."

In Fisk vs. Sawyer, 11 Conn. 545, which was an action of debt on a judgment, Defendant pleaded satisfaction of the judgment by reason of a levy on lands. The Court held:

"The levy of execution on the lands was void because "it had been levied on an interest in Defendant's land, "which was different from and less than his real interest "therein."

In Pillsbury vs. Smyth, 25 Me. 427, it was held: "That "the sale on execution of an equity of redemption of "real estate was void if there was no mortgage upon the "land and the debtor had an unincumbered title thereto at "the time of the seizure under execution."

In Brown v. Swell, 46 Me. 490, the equitable interest of the judgment debtor, Swell, in certain real estate, had been

attached and afterwards sold on execution to the Plaintiff, D. H. Brown, and which purchaser afterwards conveyed to the Plaintiff, who brought his Bill in Equity to cancel and set aside the mortgage upon the real estate.

The Court said:

"The Plaintiff claims the mortgage debt was fully paid "before the assignment thereof to the Defendant, and there- "fore that he is entitled to a discharge of the mortgage and "to a release. But if so, the mortgage debt was paid before "the attachment and sale of the equity of redemption. If "so, there was no subsisting mortgage, consequently no "equity. If no equity of redemption, then nothing passed "by the sale, and the Plaintiff has no other or greater "rights than any other stranger to interfere." Bill dismissed.

See also Howe vs. Blanden, 21 Vt. 315.

CONCLUSION.

We submit this cause to this Court as one appealing most strongly to the favorable consideration of your Honors.

In a few words, what is the case we have presented?

Frost had paid for this property by salary and advances the sum of $11,166.66, as found by the decree of the State Court (p. 147, folio 220). He lacked but the deed from

Thomas C. Durant, trustee, to give him a legal title. This deed was afterward made and appears in this record (p. 63)

Redick was employed as an attorney to procure this deed for Mr. Frost, and for which service he contracted to have $2,500. Redick, however, fails to pay into Court the $302.-71 so as to entitle Frost to receive the deed, but nevertheless insisted on having the full amount of his contract compensation of $2,500, when, by the very letter of his contract, if he did not procure for Frost a good legal title he was to have but the nominal sum of $100.

He sues Frost and obtains a judgment against him for the full amount of his fee with accumulated interest, less the $302.-71, on the theory that he had procured for Frost a good legal title to the property; otherwise he was not entitled to this compensation or to this judgment.

What does he next do? When he began that suit in the Federal Court he set forth in his pleading that Frost was a citizen of the State of Nebraska, but no sooner had he given to the Federal Court jurisdiction of the case by that averment than he immediately makes an affidavit for a writ of attachment on the proposition that Frost was a non-resident of Nebraska and was a citizen of the Territory of Montana, as a primary step toward cutting off the homestead right in the property.

The writ of attachment goes out, and it is levied not only upon this property to which he asserted in his petition he procured for Frost a good legal title, but he levied it also upon all the household furniture and the family carriage.

The matter proceeded to a sale—and then what becomes of the good legal title which he says he had procured for Frost? Why, he procured the appraisement to be so manipulated as to show that Frost did not have any title to this property, but a mere right of occupancy and possession worth $450.

Was it for this flimsy title that he claimed the fee of $2,500, or was it for the purpose of absorbing the homestead of the family for a mere song, as it were, that he might still hold a judgment against these people for over $2,000?

That is not all of the case. By this appraisement and sale he not only absorbed the property and homestead rights of the family, but he absorbed the household furniture and the family carriage.

At the time of this sale he insisted that Frost had no title but a mere right of occupancy; but no sooner is the sale confirmed and he acquires the Marshal's deed, than he steps back into this Court by a bill to quiet the title in Martin Spitley, asserting that Frost had title to the property, and that he acquired that legal title by that sale, and asked the Federal Court to quiet the title in his grantee.

Will this Court permit an attorney to absorb so valuable a piece of real estate and cut off the homestead rights of the family by such a piece of legerdemain as this has proven to be?

Martin Spitley sustains no better relation to this litigation than does John I. Redick.

Spitley did not appear as a witness in his own behalf, but the testimony of Redick (pp. 139, 140, 141) showed that Martin Spitley never saw this property; that he had no knowledge of the title, and that he bought it with knowledge that there would be trouble with Frost in order to get the possession of the property.

Justice demands that the decree of the Circuit Court shall be reversed and that the title shall be quieted in these Cross-Complainants.

JOHN L. WEBSTER,
Solicitor for Appellants.